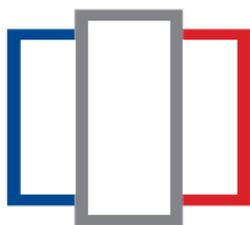


# Reglas de Arbitraje

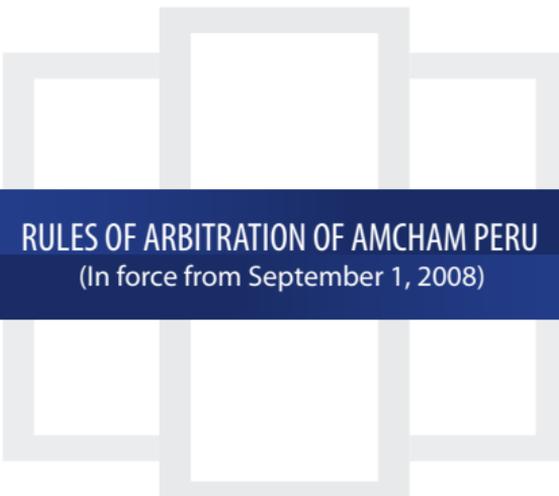
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## *Arbitration Rules*

AMCHAM-PERU



CENTRO DE  
ARBITRAJE



**RULES OF ARBITRATION OF AMCHAM PERU**  
(In force from September 1, 2008)



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## Introductory Notes

From 1988 to 1993 Peru ratified the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards of 1958, the Inter-American Convention on International Commercial Arbitration of 1975, and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, and also in 1996 it adopted the Model Law on International Commercial Arbitration of 1985 from the United Nations Commission on International Trade Law (UNCITRAL) in the General Arbitration Law (Law N° 26572). Today Peru is one of the first countries in the world to have adopted the amendments to the Model Law of the UNICTRAL of 2006 in its Arbitration Law of 2008 (Legislative Decree N° 1071), which also includes the latest developments in international arbitration comparative law.

In accordance with this harmonization and uniformization of arbitration, the International Arbitration Center of the American Chamber of Commerce of Peru (AmCham Peru) has modernized its Rules of Arbitration following the latest international trends in order to guide the practice of arbitration in Peru under uniform and efficient rules for a global arbitration practice, in other words, with the same worldwide standards that can be used by any practitioner in the world.

The new Rules of Arbitration that we offer have been designed based on the Rules of Arbitration of the International Chamber of Commerce (ICC) and taking into account the Rules of Arbitration of UNCITRAL, the American Arbitration Association (AAA), the London Court of International Arbitration (LCIA), the International Centre for Settlement of Investment Disputes (ICSID), and the World Intellectual Property Organization (WIPO).

The International Arbitration Center aspires to contribute to the development of arbitration in Peru with these Rules and with its institutional work. Our personnel have been trained in the application of these Rules and in the management of specialized information. We have a prestigious List of Arbitrators and rates competitive with the market. We are prepared to offer a specialized service to domestic and international businessmen and investors.

General Secretariat



# RULES OF ARBITRATION OF AMCHAM PERU

## INTRODUCTORY PROVISIONS

### Article 1

#### The International Arbitration Center

#### 1

The International Arbitration Center (the Center) is a unit of the American Chamber of Commerce of Peru (AmCham Peru), governed by its own Statutes and exercises its functions independently from AmCham Peru and its organs.

#### 2

The Center provides organization and administration services of domestic and international arbitration in accordance with these Rules.

#### 3

The Court of Arbitration (the Court) and the General Secretariat (the Secretariat) are organs of the Center.

#### 4

The functions of the Court are to ensure the application of these Rules and the other functions assigned in the Statutes.

#### 5

The functions of the Secretariat under these Rules shall be performed by the Secretary General (the Secretary) under the supervision of the Court. The Secretariat shall have its seat at headquarters of the AmCham Peru.

#### 6

All communications from any party or arbitrator to the Court shall be addressed to the Secretary.

#### 7

The Chairman of the Court and in his absence or at his request, the Vice-Chairman, is empowered to make urgent decisions on behalf of the Court, provided that they are reported to its members at the next session.

#### 8

The decisions of the Court with respect to all matters

relating to the arbitration shall be conclusive and binding upon the parties and the Arbitral Tribunal. Such decisions are administrative in nature.

## **Article 2**

### **Submission to the Center**

#### **1**

These Rules shall apply to the cases in which the parties have agreed to the arbitration agreement model of the Center or any other agreement that submit the organization and administration of arbitration to the Center.

#### **2**

In any of the cases referred to in Article 2(1), the parties authorize the Center to organize and administer the arbitration proceedings with the powers and duties prescribed herein and in these Rules and the Statutes of the Center.

## **Article 3**

### **Place of the Arbitration**

#### **1**

The arbitration shall take place in the city of Lima, unless the parties have agreed upon another location.

#### **2**

The Arbitral Tribunal may, after consultation with the parties, conduct hearings and meetings at any locations it considers appropriate.

#### **3**

The award shall be deemed to be made at the place of the arbitration.

## **Article 4**

### **Communications, Notifications and Time Limits**

#### **1**

All written communications submitted by any of the parties, as well as all documents annexed thereto, shall be supplied in a number of copies sufficient to provide one copy to each party, plus one to each arbitrator, and another for the Secretariat.

## 2

All notifications and communications from the Secretariat and the Arbitral Tribunal shall be sent to the last-known address of the party or its representative, for whom the same are intended, as notified either by the party in question or by the other party. Such notifications or communications may be made by delivery against receipt, registered post, courier, facsimile, e-mail or any other means of telecommunication that provides a record of the sending thereof.

## 3

A notification or communication shall be deemed to have been made on the day it was received by the party itself or by its representative, or in the case of telecommunications, the day of its transmission.

## 4

In the event that any of the parties refuses to receive the notification, the Secretary shall certify this circumstance and such party shall be considered notified as of the date of certification.

## 5

The time limits specified in these Rules, or fixed in accordance with them, shall start to run on the day following that on which a communication or notification is deemed to have been made, in accordance with Article 4(3) or, when appropriate, with Article 4(4).

## 6

Holidays or non-business day are included in the calculation of the time limits. If the last day of such period coincides with a holiday or non-business day at the place where the communication or notification is deemed to have been made, the period of time shall expire on the following business day.

## 7

The Arbitral Tribunal may at any time extend the time limits established in its decisions or prescribed by the parties in these Rules.

## COMMENCING THE ARBITRATION

### Article 5

#### Request for Arbitration

##### 1

The party wishing to have recourse to arbitration under these Rules shall submit his Request for Arbitration (the Request) to the Secretariat, which shall notify the claimant and the respondent of the receipt of the Request and the date of such receipt.

##### 2

The date on which the Request is received by the Secretariat shall, for all purposes, be deemed to be the date of the commencement of the arbitration.

##### 3

The Request shall contain the following information:

- a) The name in full, addresses and, if known, the telephone numbers, fax, and e-mail addresses of each of the parties;
- b) A description of the nature and circumstances of the dispute;
- c) The indication of the claims and the amounts sought;
- d) The arbitration agreement and the contract or document from which the dispute arises;
- e) Reference to the composition of the Arbitral Tribunal and the appointment of the arbitrator, as appropriate; and
- f) Reference to the place of arbitration, the applicable law and, if the case, the language of the arbitration.

##### 4

The claimant shall make the advance payment on administrative expenses required by Article 39(1) with his request. The Secretariat shall send a copy of the Request and the documents annexed thereto to the respondent for its answer to the request once the Secretariat has the required advance payment.

## **Article 6**

### **Answer to the Request and Counterclaims**

#### **1**

Within 30 days of the receipt of the Request from the Secretariat, the respondent shall file its Answer, which shall contain the following information:

- a) Its name in full, addresses, telephone number, fax, and e-mail address;
- b) Its position on the nature and circumstances of the dispute;
- c) Its position on the claims of the claimant;
- d) Reference to the composition of the Arbitral Tribunal and the appointment of the arbitrator, as appropriate; and
- e) Reference to the place of arbitration, the applicable law and, if the case, the language of the arbitration.

#### **2**

A copy of the Answer and the documents annexed thereto shall be communicated by the Secretariat to the claimant.

#### **3**

Any counterclaim made by the respondent shall be filed simultaneously with the Answer in a separate document and in the same structure as a Request.

#### **4**

The respondent shall make advance payment on administrative expenses mentioned by Article 39(1) with his counterclaim. The Secretariat shall send a copy of the counterclaim and the document annexed thereto to the claimant for its reply once the required advance is received.

#### **5**

The claimant shall file a reply to any counterclaim within 30 days from the date of receipt of the counterclaim communicated by the Secretariat.

## 6

The Court may extend any time limit established in this Article, should it consider the extension justified.

### Article 7

#### Consolidation

##### 1

When a party submits a Request in connection with a legal relationship in respect of which arbitration between the same parties is already pending under these Rules, the Court may, at the request of either party, consolidate the Request with the pending arbitration, provided that the Terms of Reference have not been signed or approved by the Court. When the Terms of Reference have been signed or, approved by the Court, the consolidation shall only proceed in accordance with the provisions of Article 24.

### Article 8

#### Objection of Jurisdiction

##### 1

The Arbitral Tribunal shall have the power to rule on its own jurisdiction, including objections to the existence, validity, effectiveness and scope of the arbitration agreement. For that purpose, an arbitration agreement which forms or was intended to form part of an agreement shall be treated as an independent arbitration agreement.

##### 2

If the Arbitral Tribunal upholds the validity of the arbitration agreement, it shall continue to have jurisdiction to determine the respective rights of the parties and to adjudicate their claims and p eas even though the contract itself may be non-existent or null and void.

##### 3

The objection of jurisdiction of the Arbitral Tribunal shall be made within the time limits of the Answer to the Request or the reply to the counterclaim, as the case may be. An objection that the Arbitral Tribunal is exceeding the scope of its authority shall be raised promptly after the Arbitral Tribunal has indicated its intention to decide on the matter alleged by any party beyond the scope of its authority.

## 4

The Arbitral Tribunal may only admit objections that are raised subsequently if the delay is justified. However, they may consider these issues on their own initiative at any time.

## 5

The Arbitral Tribunal may determine the objection preliminarily through a decision as to jurisdiction or in the final Award rendered, when it is deemed appropriate and depending on the circumstances of the case.

### **Article 9**

#### **Prima facie Decision**

## 1

If the respondent does not file an Answer, as provided by Article 6, or if any party raises one or more objections concerning the existence, validity, effectiveness or scope of the arbitration agreement, the Court may decide to proceed with the arbitration if it is prima facie satisfied that an arbitration agreement under these Rules may exist. In such a case, any decision as to the jurisdiction of the Arbitral Tribunal shall be taken by the Arbitral Tribunal itself. If the Court is not convinced of that there may be an arbitration agreement, it shall notify the parties that the arbitration cannot proceed.

### **Article 10**

#### **Representation**

## 1

The parties may appear in person or through duly authorized representatives. In addition, they may be assisted by lawyers and advisers, irrespective of their nationality.

## 2

At any time during the arbitration, the Arbitral Tribunal may require from any party proof of authority granted to its representative(s) in such form as they may determine.

## THE ARBITRAL TRIBUNAL

### Article 11

#### General Provisions

#### 1

All arbitrators shall be and remain independent of the parties during the arbitration, and none shall act as advocates for any party. No arbitrator, whether before or after its appointment, shall advise any party on any aspect of the dispute or its possible outcome.

#### 2

No party or person acting on his behalf shall have communications pertinent to the case subject to arbitration in the absence of the other party, with any arbitrator or with any prospective for appointment as arbitrator by a party, except to advise the prospective of the general nature of the dispute, of anticipated procedures to know his qualifications, availability or independence from the parties or to discuss the suitability of prospective for selection as the third arbitrator, when the parties or the arbitrators selected by them shall participate in this election. No party or person acting on his behalf may communicate, in the absence of the other party, with any prospective for presiding over the Arbitral Tribunal.

#### 3

The person nominated as arbitrator must sign, upon accepting the post, a statement of independence and make known in writing to the Secretariat any facts or circumstances likely to give rise to any justified doubts on his independence from the standpoint of the parties. He must also remit a written summary of his past and present professional activities. The Secretariat shall communicate such information in writing to the parties and set a time limit for expressing their comments.

#### 4

The arbitrator shall disclose in writing immediately, both to the Secretariat and the parties, any other similar circumstances that may arise after the statement of independence and before the arbitration is concluded.

#### 5

The decisions of the Court on the appointment,

confirmation or replacement of an arbitrator shall be final and the reasons that motivate them shall not be communicated.

## 6

The arbitrator, by accepting his appointment, commits himself to undertake his role until the end of arbitration in accordance with these Rules.

## 7

Unless the parties agree otherwise, the Arbitral Tribunal shall be constituted in accordance with the provisions of Articles 12, 13 and 14.

### Article 12

#### Number and Appointment of Arbitrators

##### 1

Disputes shall be resolved by a sole arbitrator or by three arbitrators.

##### 2

When the parties have not agreed upon the number of arbitrators, the Court shall appoint a sole arbitrator, save where it appears that the dispute warrants the appointment of three arbitrators. In such case, the claimant shall name an arbitrator within a period of 10 days from the receipt of the notification of the decision of the Court, and the respondent shall nominate an arbitrator within a period of 10 days from the receipt of the notification of the nomination made by the claimant. If a party fails to appoint an arbitrator, the appointment shall be made by the Court. The third arbitrator, who shall act as chairman of the Arbitral Tribunal, shall be appointed by the Court.

##### 3

When the parties have agreed that the dispute shall be settled by a sole arbitrator, they may appoint one by common agreement. If the parties fail to appoint him within 10 days from the date of receipt of the notification by the Secretary General to appoint him, the sole arbitrator shall be appointed by the Court.

##### 4

When the dispute is to be submitted to the decision of three arbitrators, each party shall nominate one arbitrator

in the Request and the Answer, respectively. If a party fails to nominate an arbitrator, the appointment shall be made by the Court. The third arbitrator, who will act as chairman of the Arbitral Tribunal, shall be appointed by the Court unless the parties have agreed upon another procedure for his appointment. Should such procedure not result in a nomination within the time limit fixed by the parties or by the Court, the Court shall appoint the third arbitrator.

## **Article 13**

### **Appointment and Confirmation by the Court**

#### **1**

The Secretary is empowered to submit the confirmation of any arbitrator to the decision of the Court whenever he deems it necessary.

#### **2**

In confirming or appointing arbitrators, the Court shall consider the nationality of the prospective arbitrator, residence and the other relationships with the countries of which the parties or the other arbitrators are nationals and the availability and ability of the prospective arbitrator, to conduct the arbitration in accordance with these Rules.

#### **3**

When the parties are of different nationalities, a sole arbitrator or chairman of the Arbitral Tribunal shall not have the same nationality as any party. Under appropriate circumstances, however, and when no party is opposed and within the time limits set by the Court, the sole arbitrator or chairman of the Arbitral Tribunal may be of the same nationality as one of the parties. The nationality of the parties includes that of controlling shareholders or interests.

#### **4**

When the Court appoints an arbitrator, it shall appoint one of the members on the List of Arbitrators of the Center, except when given the circumstances, it is deemed appropriate to appoint a person who is not part of it.

## **Article 14** **Multiple Parties**

### **1**

If there are multiple claimants or respondents, and the dispute is to be submitted to the decision of three arbitrators, the claimants shall nominate one arbitrator jointly, and the respondents shall nominate one arbitrator jointly. The third arbitrator, who shall act as chairman of the Arbitral Tribunal, shall be named by the Court.

### **2**

If the claimants or respondents fail to make a joint appointment, the Court shall appoint all arbitrators.

## **Article 15** **Acceptance**

The Secretary shall notify all the arbitrators of their appointment, seeking their acceptance in writing and their statement of independence within 10 days. After that time period, in the absence of acceptance and the declaration, it shall be deemed that the appointment is not accepted, in which case the Court shall proceed to directly appoint the arbitrator or arbitrators necessary to constitute the Arbitral Tribunal.

## **Article 16** **Challenge of Arbitrators**

### **1**

An arbitrator may be challenged by any party if circumstances exist that give rise to justifiable doubts as to his impartiality or independence. A party may only challenge an arbitrator he has appointed, or in whose appointment he has participated, for reasons of which he becomes aware after the appointment has been made.

### **2**

A challenge must be submitted in writing to the Secretariat, explaining the facts and circumstances on which it is based, within 10 days of receipt by the interested party of the notification of acceptance or confirmation of the arbitrator, or within 10 days of the date when the party was informed of the facts and circumstances on which his challenge is based, if such date is subsequent to the receipt of such notification. A challenge does not prevent the constitution of the Arbitral Tribunal.

### 3

The Court shall decide on the merits of a challenge after the Secretariat has afforded the arbitrator concerned, the other party and, if applicable, the other members of the Arbitral Tribunal, the opportunity to submit written comments within a suitable period of time. Such comments shall be communicated to the parties and to the arbitrators.

### 4

A decision by the Court shall not be necessary if the parties agree to the challenge or if the arbitrator withdraws.

### 5

The Arbitral Tribunal, under its sole discretion, may suspend or continue the arbitration while the challenge is pending.

## Article 17

### Replacement of Arbitrators

#### 1

An arbitrator shall be replaced upon his death, upon the acceptance by the Court or by the parties of a challenge, or upon the request of all the parties.

#### 2

An arbitrator shall also be replaced on the initiative of the Court when it rules that he is prevented *de jure* or *de facto* from fulfilling his functions, or that he is not fulfilling his functions in accordance with the Rules or within the prescribed time limits.

#### 3

When, on the basis of information that has come to its attention, the Court considers applying Article 17(2), it shall decide on the matter after the arbitrator concerned, the parties in case any other members of the Arbitral Tribunal have had an opportunity to comment in writing within a suitable period of time. Such comments shall be communicated to the parties and to the arbitrators.

#### 4

The Court shall decide upon the amount of fees to be paid to the former arbitrator, as it deems appropriate depending on the circumstances.

## 5

When an arbitrator is to be replaced, the Court has discretion to decide whether or not to follow the original nominating process. Once reconstituted, and after having invited the parties to comment, the Arbitral Tribunal shall determine if and to what extent the prior proceedings shall be repeated.

## 6

Subsequent to the closing of the hearings, instead of replacing an arbitrator who has died or been removed by the Court pursuant to Articles 17(1) and 17(2), the Court may decide, when it considers it appropriate, that the remaining arbitrators shall continue the arbitration. In making such a determination, the Court shall take into account the views of the remaining arbitrators and of the parties and such other matters that it considers appropriate under the circumstances.

## THE ARBITRAL PROCEEDINGS

### Article 18

#### Transmission of the file

The Secretariat shall transmit the file to the Arbitral Tribunal as soon as it has been constituted, provided the advance on costs request by the Secretariat at this stage has been paid accordance with Article 39(3).

### Article 19

#### Rules Governing the Arbitration

## 1

The arbitration before the Arbitral Tribunal shall be governed by these Rules and, where these Rules are silent, by the rules which the parties or, failing them, the Arbitral Tribunal may settle on, with or without reference to the law of the place of arbitration.

## 2

In all cases, the Arbitral Tribunal shall act impartially and ensure that each party has sufficient opportunity to present its case.

## **Article 20**

### **Language**

#### **1**

Unless the parties agree otherwise, once the Arbitral Tribunal is constituted, they shall determine the language or languages of the arbitration, due regard being given to all relevant circumstances, including the language of the contract and the arbitration agreement.

#### **2**

The Arbitral Tribunal may order that any document submitted in another language be accompanied by a translation to the arbitration language or languages, in a manner to be determined by them.

## **Article 21**

### **Applicable Law**

#### **1**

The parties shall be free to agree upon the law to be applied by the Arbitral Tribunal to the merits of the dispute. In the absence of any such agreement, the Arbitral Tribunal shall apply the law which it determines to be appropriate.

#### **2**

In all cases the Arbitral Tribunal shall take account of the provisions of the contract and the relevant trade usages.

#### **3**

The Arbitral Tribunal shall decide *ex aequo et bono* only if the parties have agreed to give it such powers.

## **Article 22**

### **Working of the Arbitral Tribunal**

#### **1**

Unless the parties agree otherwise, the presence of a majority of the members of the Arbitral Tribunal shall be required at its hearings.

#### **2**

Decisions of the Arbitral Tribunal shall be made by a majority of the votes of all its members. If there is no majority, the decision shall be made by the Chairman.

### 3

The Arbitral Tribunal may deliberate anywhere it deems appropriate. The deliberations of the Arbitral Tribunal shall be conducted in private and remain secret. Only members of the Arbitral Tribunal will take part in its deliberations, except in case of a decision otherwise by the arbitrators.

### 4

For the deliberation and making decisions, including the Award, the arbitrators may conduct virtual sessions and make decisions through the use of electronic means that record their expression of will.

### 5

The Chairman of the Arbitral Tribunal, with the consent of the other arbitrators, may make decisions of mere formality.

## Article 23

### Terms of Reference

#### 1

As soon as it receives the file from the Secretariat, the Arbitral Tribunal shall draw up, on the basis of documents or in the presence of the parties and in the light of their submissions, a document defining its Terms of Reference. This document shall include the following particulars:

- a) The name and capacity in which the parties intervene;
- b) The address of the parties where notifications of the arbitration may be made;
- c) The name and addresses of the arbitrators;
- d) A summary of the claims and relief sought by the parties;
- e) A list of issues to be determined unless the Arbitral Tribunal considers inappropriate; and
- f) Reference to the powers conferred on the Arbitral Tribunal to decide *ex aequo et bono*.
- g) The place of the arbitration.

## 2

The Terms of Reference shall be signed by the parties and by the arbitrators within 60 days of the date on which the file has been transmitted to the Arbitral Tribunal. The Court may extend this time limit pursuant to a reasoned request from the Arbitral Tribunal or on its own initiative if it decides it is necessary to do so.

## 3

If one of the parties refuses to take part in the drawing up or fails to sign it, the Terms of Reference shall be submitted to the Court for approval. As soon as the Terms of Reference have been signed or approved by the Court, the arbitration shall proceed.

## 4

When drawing up the Terms of Reference, or as soon as possible thereafter, the Arbitral Tribunal, after having consulted the parties, shall establish in a separate document the provisional timetable that it intends follow during the conduct of the arbitration, and shall communicate to the parties.

### **Article 24**

#### **New Claims** /

## 1

After the Terms of Reference have been signed or approved by the Court, no party shall make new claims or counterclaims which fall outside the limits of the Terms of Reference unless it has been authorized to do so by the Arbitral Tribunal, which shall consider the nature of such new claims or counterclaims, the state of the arbitration, any prejudice to the other party and other relevant circumstances.

## 2

The Arbitral Tribunal shall fix a suitable time limit within which the other party shall submit his answer to the new claims.

### **Article 25**

#### **Conduct of the Arbitration** /

## 1

The Arbitral Tribunal shall conduct the arbitration in the shortest possible time in the manner it considers

appropriate, provided that the parties are treated with equality and are given a fair opportunity to present their case. The parties shall do everything necessary for an efficient and expeditious conduct of the arbitration.

## **2**

The Arbitral Tribunal may decide the case solely on the basis of documents submitted by the parties, without the need to convene a hearing, unless any of them requests a hearing. Failing such a request, however, it may of its own motion decide to hear them when it is considered advisable.

## **3**

Each party has the burden to prove the facts on which its Request or Answer is based, save a legal provision to the contrary.

## **4**

The Arbitral Tribunal may decide to hear witnesses, experts appointed by the parties or any other person, in the presence of the parties or in their absence, provided that they have been duly summoned.

## **5**

The Arbitral Tribunal may appoint one or more independent experts, define their terms of reference and receive their reports. The arbitrators shall submit a copy of the reports to all parties and give them an opportunity to express their opinion about them in writing. The parties may inspect any document on which the expert supports his report. The parties shall have an opportunity to interrogate during a hearing any expert appointed by the Arbitral Tribunal at the request of either party. At this hearing, the parties may appeal to experts to offer their opinions on the issues under discussion.

## **6**

The Arbitral Tribunal, at the request of either party or on its own initiative, may visit any place connected with the dispute or conduct inquiries there. For this purpose, it shall determine in advance the scope of the visit or the subject of the inquiry, the procedure to be followed, the timetable and other relevant provisions.

## **7**

At any time during the arbitration, at the request of

either party or on its own initiative, the Arbitral Tribunal may require parties to provide any evidence that it deems necessary.

## **8**

The Arbitral Tribunal shall determine admission, relevance and value of the evidence submitted by the parties.

### **Article 26**

#### **Hearings**

## **1**

The Arbitral Tribunal shall summon the parties with reasonable notice to appear at a hearing on the day at the place fixed by it.

## **2**

The Arbitral Tribunal shall be in full charge of the hearings at which the parties are entitled to be present. Unless otherwise authorized by the Arbitral Tribunal and the parties or a legal provision to the contrary, the hearings shall take place in private and shall not be open to persons not involved in arbitration.

## **3**

The Arbitral Tribunal shall determine whether and, if so, in what form a record shall be made of any hearing.

## **4**

The Arbitral Tribunal may in advance of any hearing submit to the parties in a list of questions which it wishes them to answer with special attention.

### **Article 27**

#### **Default**

## **1**

If a party fails, without sufficient cause, to submit its answer to a claim within the prescribed period, the arbitration shall continue.

## **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 shall proceed with the arbitration.

### 3

If either party duly ordered to provide or take any other steps in the arbitration fails to do so within the time limit established by the Arbitral Tribunal without showing sufficient cause, the Arbitral Tribunal may take this circumstance into account and make the award based on the available evidence.

## Article 28

### Closing of the Hearings

#### 1

When it is satisfied that the parties have had a reasonable opportunity to present their cases, the Arbitral Tribunal shall declare the hearings closed. Thereafter, no further submission or argument may be made, or evidence produced, unless requested or authorized by the Arbitral Tribunal.

#### 2

The Arbitral Tribunal, on its own initiative or at the request of a party, may reopen the hearings at any time prior to the issuance of the Award, if it deems it appropriate.

## Article 29

### Interim Measures

#### 1

The Arbitral Tribunal may, as soon as the file has been transmitted to it, at the request of a party, order any interim measure it deems to be appropriate after listening to the other party, except where they consider it risks frustrating the purpose of the measure. The Arbitral Tribunal may make the granting of any such measure subject to an appropriate guarantee being furnished by the requesting party. Any such measures shall be taken by reasoned decision.

#### 2

Before the file is transmitted to the Arbitral Tribunal, and in appropriate circumstances even thereafter the parties, with the authorization of the Arbitral Tribunal, may apply to any competent judicial authority the adoption of interim measures. The application that a party makes to a judicial authority to obtain such measures or for the implementation of any such measures ordered by an

Arbitral Tribunal shall not be deemed an infringement or a waiver of the arbitration agreement and shall not affect the relevant powers of the Arbitral Tribunal. Any such application and any measures taken by the judicial authority shall be notified without delay to the Secretariat, which shall inform the Arbitral Tribunal thereof.

### **Article 30**

#### **Termination of the Arbitration**

If a party requests that the arbitration be terminated prior to the award, the Arbitral Tribunal shall order the termination of the arbitration, unless the other party objects thereto, in which case, the arbitration shall continue. In the case that the Arbitral Tribunal has not yet been constituted, this function corresponds to the Secretary.

## **THE AWARD**

### **Article 31**

#### **Time Limit for the Award**

#### **1**

The Award, including any individual opinion, shall be made within 60 days after closure of the hearings.

#### **2**

The Court may extend this limit time pursuant to a reasoned request from the Arbitral Tribunal or on its own initiative if it decides it is necessary to do so.

### **Article 32**

#### **Making of the Award**

#### **1**

When the Arbitral Tribunal is composed of more than one arbitrator, the Award is given by a majority decision. If there is no majority, the Award shall be made by the Chairman of the Arbitral Tribunal.

#### **2**

The Arbitral Tribunal shall make its Award in writing and state the reasons upon which it is based. The Award shall also state the date when it is made and the place of the arbitration, and it shall be signed by the members of the

Arbitral Tribunal who assent to it or, should it be the case, the Chairman of the Arbitral Tribunal.

### 3

Any member of the Arbitral Tribunal may attach his individual opinion to the Award, whether he dissents from the majority or not.

### 4

The Arbitral Tribunal may make partial awards on different issues of the dispute at different times during the proceedings. Such awards shall have the same status and effect as the final Award.

### 5

The Arbitral Tribunal may consult the Court with regard to matters of form, particularly to ensure the enforceability of the Award.

## **Article 33**

### **Award by Consent**

If the parties reach a settlement after the file has been transmitted to the Arbitral Tribunal in accordance with Article 18, a record of the settlement shall be left in the form of an Award if so requested by the parties and if the Arbitral Tribunal agrees to do so.

## **Article 34**

### **Deposit, Notification and Effects of the Award**

### 1

An original of each Award made in accordance with these Rules shall be deposited with the Secretariat.

### 2

Within 10 days of depositing the Award, the Secretariat shall notify to the parties of the text signed by the Arbitral Tribunal, provided that the costs of the arbitration have been fully paid by the parties or by one of them.

### 3

The Secretary shall, upon request, make available to the parties additional certified copies of the Award.

## 4

All Awards shall be final, unappealable and binding on the parties. By submitting the dispute to arbitration under these Rules, the parties undertake to carry out any Award without delay.

### **Article 35**

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

## 1

On its own initiative, the Arbitral Tribunal may correct any clerical, computational or typographical error, or any errors of similar nature contained in an Award within 15 days of the date of such Award.

## 2

Any application of a party for the correction of an error of the kind referred to in Article 35(1), or for the interpretation of an Award, must be made to the Secretariat within 15 days of the receipt of the Award by such party. The Arbitral Tribunal shall grant the other party a time limit of 15 days of the receipt of the request to submit any comments thereon.

## 3

The decision to correct or to interpret the Award shall take the form of an addendum and shall constitute part of the Award, not later than 15 days following the receipt of any comments from the other party or the expiration of the time limit for having done so.

### **Article 36**

#### **Supplementary Award**

## 1

Within 15 days of receipt of the final Award, either party may apply the issuance of a supplementary Award as to claims presented in the arbitration but not dealt with in the Award. The Arbitral Tribunal shall grant the other party 15 days, starting from receipt of the request, to submit its comments.

## 2

If the Arbitral Tribunal considers the request founded, it shall issue a supplementary Award within 15 days of receipt of the comments of the other party or the time limit for doing so.

## **Article 37**

### **Exclusion of the Award**

#### **1**

Any application by a party for exclusion from the Award based on issues or matters not subject to the decision and authority of the Arbitral Tribunal shall be addressed to the Secretariat within 15 days of receipt of the Award by such party. The Arbitral Tribunal shall grant the other party 15 days, starting from receipt of the request, to submit its comments.

#### **2**

The Arbitral Tribunal shall decide within 15 days of the receipt of comments from the other party or the time limit for doing so.

## **Article 38**

### **Enforceability**

The Arbitral Tribunal is empowered to enforce its measures and its Awards, unless it deems judicial enforceability to be necessary or appropriate, or that it is prohibited by the arbitration law of the place of arbitration.

## **THE COST OF ARBITRATION**

## **Article 39**

### **Advance to Cover the Costs of Arbitration**

#### **1**

Any main claim or counterclaim shall be subject to a non-refundable advance payment on administrative expenses determined by the Scale of Administrative Expenses and Fees of Arbitrators (the Scale). Such payments shall be credited to the portion of the administrative costs of the claimant or the respondent.

#### **2**

The Secretary General shall not take any action on a main claim or counterclaim until the advance on the administrative expenses is paid. If the claimant or respondent does not pay this advance within the 15 days required by the Secretary, the main claim or counterclaim

shall be deemed withdrawn and ordered to be filed, without prejudice to the right of the parties to resubmit the same main claim or counterclaim in another arbitration.

### **3**

After receipt of the claim, the Secretary General may request the claimant to pay a provisional advance to cover the costs of arbitration until the Terms of Reference have been drawn up. It shall be considered as a partial payment of the advance of cost.

### **4**

The Secretary General shall fix the advance on costs of arbitration in an amount likely to cover the fees and expenses of the arbitrators, and the administrative costs of the Center for the claims and counterclaims submitted by the parties, applying the Scale of the Center on the basis of the amount of the case or at its discretion if the amount in dispute is indeterminate.

### **5**

The advance on cost fixed by the Secretary may be subject to readjustment at any time during the arbitration, in particular to take into account fluctuations in the amount in dispute, changes in the amount of the estimated expenses of the arbitrator, or the evolving difficulty or complexity of the arbitration.

### **6**

In the event that, in addition to the main claim, one or more counterclaims are made, the Secretary may set separate provisions for the main claim and the claim or counterclaims when the amount of the counterclaim is significantly greater than the amount of the claim or involves the consideration of significantly different matters, or when it is otherwise deemed appropriate under the circumstances.

### **7**

The advance on cost fixed by the Secretary shall be payable in equal shares by the claimant and the respondent. Any provisional advance paid on the basis of Article 39(1) shall be considered to be a partial payment thereof. However, either party shall be free to pay the whole of the advance on costs in respect of a main claim or counterclaim if the other party fails to pay share. When the Secretary sets separate advance on cost in accordance with Article 39(6),

each party shall pay the advance on costs corresponding to its claims.

## 8

When a request for advance on cost has not been complied, the Secretary may direct the Arbitral Tribunal to suspend its work and set a time limit that shall not be less than 15 days, for compliance with the obligation for payment, at the end of which the corresponding main claim or counterclaim shall be considered withdrawn. Such party shall not be prevented, on the ground of such withdrawal, from reintroducing the same claims or counterclaims in another arbitration.

## 9

If a party claims a right to a set-off with regard to either claims or counterclaims, such set-off shall be taken into account in determining the advance to cover the costs of arbitration in the same way as a separate claim insofar as it may require the Arbitral Tribunal to consider additional matters.

## 10

Any arrangement between the parties and arbitrators on fees is contrary to these Rules. The amounts paid to the arbitrator do not include any taxes that may apply to the fee of the arbitrator.

### **Article 40**

#### **Decision on the Costs of Arbitration** /

## 1

The costs of arbitration shall include the fees and expenses of the arbitrators and the administrative expenses of the Center fixed by the Court with the Scale of the Center in force at the time of the commencement of the arbitration, as well as, the fees and expenses of any experts appointed by the Arbitral Tribunal and the reasonable legal costs expenses incurred by the parties for the arbitration.

## 2

Decision on costs other than those fixed by the Court may be made by the Arbitral Tribunal at any time during the arbitration.

### **3**

The Court shall fix the fees of the arbitrator in accordance with the Scale of the Center set out or, where the sum in dispute is not stated, at its discretion. The Court may fix the fees of the arbitrator at a figure higher or lower than result from the application of the relevant Scale of the Center should this be deemed justified due to the exceptional circumstances of the case.

### **4**

The Court shall fix the administrative expenses of each arbitration in accordance with the Scale of the Center set out or, where the sum in dispute is not stated, at its discretion. In exceptional circumstances, the Court may fix the administrative expenses at a lower or higher amount than that which would result from the application of the Scale of the Center, provided that such expenses do not exceed the maximum amount set of the Scale.

### **5**

Before any expertise ordered by the Arbitral Tribunal can be commenced, the parties, or one of them, shall pay an advance on cost fixed by the arbitrators sufficient to cover the fees and expenses of the expert as determined by the Arbitral Tribunal.

### **6**

The final Award shall fix the costs of arbitration and decide which of the parties shall bear them or in what proportion they shall be borne by them on the basis of reasonable criteria.

### **7**

The Secretary shall fix the costs if the arbitration terminates before the rendering of a final Award, taking into account the stage attained by the arbitration and any other relevant circumstances.

## MISCELLANEOUS

### Article 41

#### Confidentiality

##### 1

Unless otherwise agreed by the parties, they, the Court, the Secretary and the arbitrators shall maintain the confidentiality of the arbitration, the Award and, insofar as it contains information that is not in the public domain, any documentary or other evidence known during the arbitration, unless required by a legal action in connection with the award or otherwise required by law.

##### 2

Notwithstanding Article 41(1), the Center may include information relating to arbitration in any statistics that appear in publications relating to its activities, provided that such information does not permit identification of the parties or the particular circumstances of the dispute.

### Article 42

#### Modified Time Limits

##### 1

The parties may agree to shorten the various time limits set out in these Rules. Any such agreement entered into subsequent to the constitution of an Arbitral Tribunal shall become effective only upon the approval of the Arbitral Tribunal.

##### 2

The Court, on its own initiative, may extend any time limit which has been modified pursuant to Article 42(1) if it decides that it is necessary for it or for the Arbitral Tribunal to fulfill their responsibilities in accordance with these Rules.

### Article 43

#### Waiver

A party that does not immediately express its objection in writing to a failure to comply with any provision of these Rules, any other rules governing the arbitration, any direction given by the Arbitral Tribunal, or any requirement under the arbitration agreement relating to

the constitution of the Arbitral Tribunal or to the conduct of the process, shall be deemed to have irrevocably waived its right to object.

#### **Article 44**

##### **Exclusion of Liability**

Neither AmCham Peru, nor its directors and employees, the Center, the arbitrators, the members of the Court and its Secretary shall be liable for any act or omission in connection with the arbitration.

#### **Article 45**

##### **General Rules**

### **1**

In all matters not expressly provided for in these Rules, the Court, the Arbitral Tribunal and the parties shall act in the spirit of these rules and shall make every reasonable effort to ensure that an award is legally enforceable.

### **2**

When the parties have agreed to arbitrate under the Rules of Arbitration of AmCham Peru, they subject themselves to the Rules in force on the date of commencement of the arbitration unless they have agreed to submit to the Rules in force on the date of the arbitration agreement.

## STATUTE OF THE INTERNATIONAL ARBITRATION CENTER OF AMCHAM PERU

### THE CENTER

#### **Article 1** **Structure**

##### **1**

The International Arbitration Center (the Center) of the American Chamber of Commerce of Peru (AmCham Peru) exercises its functions through the Arbitration Court (the Court) and the General Secretariat (the Secretariat).

##### **2**

The Court and the Secretariat exercise their functions with complete independence from AmCham Peru, its organs and its members.

##### **3**

The Center may also provide services of negotiation, conciliation, mediation and other alternative dispute resolution methods.

#### **Article 2** **Submission**

The Rules of Arbitration of the Center shall apply when the parties agree to the arbitration agreement model of the Center or any other agreement that submits the arbitration to the organization and administration of the Center.

### THE COURT OF ARBITRATION

#### **Article 3** **Composition**

##### **1**

The Court is composed of no less than 7 and no more than 9 members appointed by the Board of AmCham Peru (the Board), considering their prestige and knowledge in the field of arbitration. It is assisted by a Secretary appointed by the Court.

## 2

The Board appoints the Chairman and Vice-Chairman from among the members elected to the Court.

## 3

On the proposal of the Chairman of the Court, the Board may appoint alternate members.

## 4

The members of the Court are appointed for a three-year term and may be appointed for one additional consecutive term. In the event that a member is unable to perform his functions a successor shall be appointed by the Board for the remainder of the term.

## 5

The Chairman of the Court represents and directs the Center. His function is to coordinate all aspects related to the activities of the Center with the Board and with the Secretary.

### **Article 4** **Functions**

#### 1

The Court has all the powers necessary to assure the application of the Rules of Arbitration of the Center and of any other approved rules.

#### 2

The functions of the Court are:

- a) To verify the prima facie existence of the arbitration agreement.
- b) To appoint, confirm and substitute arbitrators as well as to resolve challenges.
- c) To approve the Terms of Reference drafted by the Arbitral Tribunal.
- d) To fix the fees of arbitrators and the administrative expenses of the Center.
- e) To approve the model arbitration agreement of the Center.

- f) To approve the Rules of Arbitration and other rules of the Center.
- g) To approve the Scale of Administrative Expenses and Fees of Arbitrator of the Center.
- h) To submit the Statutes of the Center to the Board for its approval.
- i) To approve the List of Arbitrators of the Center.
- j) To interpret the Rules of Arbitration and other rules of the Center.
- k) To present to the Board the annual budget, the annual report and the financial statements of the Center.
- l) To appoint the Secretary of the Center.
- m) To write reports requested on arbitration and other alternative dispute resolution methods.
- n) To enter into cooperative agreements with national and international institutions and organizations for the development of arbitration.
- o) To do any other activities that may be necessary to perform the above.

### **3**

The Court has full authority to establish the occasion and the method of selection, appointment and organization of the List of Arbitrators of the Center and, when appropriate, to decide on the suspension or separation of its members.

### **4**

The Court may form Working Groups to study and investigate certain matters and to summon people it deems appropriate.

### **5**

For the appointment of arbitrators of the Court, the Secretary shall submit a proposal of candidates from the List of Arbitrators of the Center, considering their specialization and the nature of the dispute. The proposal may include, for justifiable reasons, persons who are not on the List of Arbitrators.

## **Article 5** **Sessions**

### **1**

The Court shall meet on the date and place to be determined by its Chairman.

### **2**

Court sessions are presided over by the Chairman, or in his absence, by the Vice-Chairman. The Court deliberations shall be valid if the majority of its members are present. Decisions are made by a majority vote, with the Chairman deciding in the event of a tie. The Secretary shall attend the deliberations with a voice but no vote.

### **3**

Only members of the Court and the members of the Secretariat may attend Court sessions. In exceptional circumstances, the Chairman of the Court may invite other persons to attend the sessions, who must respect the confidential nature of the work of the Court.

### **4**

The sessions may be conducted virtually through printed, electronic, or other media that permit communication and ensure the authenticity of the decisions. In such cases, the Secretariat shall document the proposals, discussions, and decisions that are made.

## **Article 6** **Restrictions**

### **1**

The Chairman and the members of the Secretariat shall not act as arbitrators or as counsel in cases submitted to the Center.

### **2**

The other members of the Court shall not be appointed by the Court as arbitrators. However, they may be nominated as arbitrators by any party or through the procedure agreed upon by them.

### **3**

When any member of the Court or the Secretariat has an interest of any kind in a case pending before the

Court, he shall immediately inform the Secretary upon becoming aware of such involvement. Said person shall refrain from participating in the deliberations or in the decisions of the Court concerning the case, and shall not attend from the session of the Court wherever the matter is considered. The person involved shall not receive information or documentation related to the arbitration at issue. The decisions of the remaining members of the Court shall be valid regardless of the number of members who abstain.

## **Article 7** **Confidentiality**

**1**  
The work of the Court is of a confidential nature which must be respected by everyone who participates in that work in whatever capacity, role, or methods used.

**2**  
The documents and all information submitted to the Court, as well as the contents of what occurred during the proceedings brought before it, shall be communicated only to the members of the Court and the Secretariat and to those persons authorized by the Chairman to attend the sessions. When appropriate, they shall also be communicated to the parties.

## **THE COURT OF ARBITRATION**

### **Article 8** **Attribution**

The Secretariat is the body responsible for the development, organization and administration and the activities of the Center, under the supervision of the Court.

### **Article 9** **Appointment**

The Secretariat is led by a Secretary who is appointed by the Court, considering his prestige and knowledge of arbitration.

## **Article 10**

### **Functions**

#### **1**

The functions of the Secretary General are:

- a) To present proposals to the Court for the appointment of arbitrators.
- b) To submit the confirmation of arbitrators to the Court.
- c) To fix the advance on cost to cover the costs of arbitration and any provisional advances.
- d) To charge the fees of the arbitrators and administrative expenses of the Center.
- e) To issue records and certifications of the procedures of the Center.
- f) To ensure the efficient provision of services of the Center pursuant to the Rules of Arbitration or other regulations of the Center.
- g) To participate in sessions of the Court with the right to be heard and, to document the proposals, discussions and decisions made.
- h) To propose to the Court any modifications deemed necessary to the Statute, the Rules of Arbitration or other rules of the Center.
- i) To propose to the Court the annual budget, annual report and the financial statements of the Center.
- j) To do any others that may be necessary to carry out its functions.

#### **2**

The fees of the arbitrators and the administrative expenses of the Center shall be calculated and charged by the Secretariat on the basis of the amount of the case and according to the Scale of Administrative Expenses and Fees of Arbitrators. Nevertheless, the Secretariat may calculate and charge the expenses of an extraordinary occurrence during the organized and administered by the Center.

### 3

The Chairman or the Secretary General, with the authorization of the parties, may allow researchers to conduct efforts of an academic nature on arbitration and commercial law, access to Awards and other documents of general interest, taking the necessary steps to ensure confidentiality.

### 4

In all cases submitted to the arbitration of the Center, the Secretariat shall retain in its archives the Awards, the Terms of Reference and the decisions of the Court, as well as correspondence pertinent to the case. Other documents may be destroyed three months after the termination of the proceedings, unless either party or the arbitrators, at their cost, request the return of the documents submitted.

# SCALES OF ADMINISTRATIVE EXPENSES AND FEES OF ARBITRATORS

## A. ADMINISTRATIVE EXPENSES

Sum in Dispute (in US Dollars)			Administrative expenses	
up to			50.000	\$1.500
from	50.001	to	100.000	1,50%
from	100.001	to	500.000	0,50%
from	500.001	to	1.000.000	0,40%
from	1.000.001	to	2.000.000	0,30%
from	2.000.001	to	5.000.000	0,20%
from	5.000.001	to	10.000.000	0,10%
from	10.000.001	to	50.000.000	0,05%
over		to	50.000.000	\$50.000

(\*) For illustrative purposes only, the table on the following page indicates the resulting administrative expenses in US\$ when the proper calculations have been made.

## B. FEES OF ARBITRATORS

Sum in Dispute (in US Dollars)			Fees		
			Minimum	Maximum	
up to			50.000	\$1.500	10,00%
from	50.001	to	100.000	1,00%	5,00%
from	100.001	to	500.000	0,50%	4,00%
from	500.001	to	1.000.000	0,40%	3,00%
from	1.000.001	to	2.000.000	0,30%	1,50%
from	2.000.001	to	5.000.000	0,20%	1,00%
from	5.000.001	to	10.000.000	0,10%	0,50%
from	10.000.001	to	50.000.000	0,05%	0,10%
over		to	50.000.000	0,01%	0,05%

(\*\*) For illustrative purposes only, the table on the following page indicates the resulting range of fees when the proper calculations have been made.

## ADVANCE PAYMENT ON ADMINISTRATIVE EXPENSES BY CLAIM OR COUNTERCLAIM

Type	Cost
National	\$ 500
International	\$ 1,000

SUM IN DISPUTE (in US Dollars)	A. ADMINISTRATIVE EXPENSES (in US Dollars)	B. FEES OF ARBITRATORS (in US Dollars)
	Minimum	Maximum
up to 50,000	1,500	10.00% of amount in dispute
from 50,001 to 100,000	1,500 + 1.50% of amt over 50,000	5,000 + 5.00% of amt over 50,000
from 100,001 to 500,000	2,250 + 0.50% of amt over 100,000	2,000 + 0.50% of amt over 100,000
from 500,001 to 1,000,000	4,250 + 0.40% of amt over 500,000	4,000 + 0.40% of amt over 500,000
from 1,000,001 to 2,000,000	6,250 + 0.30% of amt over 1,000,000	6,000 + 0.30% of amt over 1,000,000
from 2,000,001 to 5,000,000	9,250 + 0.20% of amt over 2,000,000	9,000 + 0.20% of amt over 2,000,000
from 5,000,001 to 10,000,000	15,250 + 0.10% of amt over 5,000,000	15,000 + 0.10% of amt over 5,000,000
from 10,000,001 to 50,000,000	20,250 + 0.05% of amt over 10,000,000	20,000 + 0.05% of amt over 10,000,000
over 50,000,000	50,000	40,000 + 0.01% of amt over 50,000,000
of amt over = of amount over		148,500 + 0.05% of amt over 50,000,000