

WIPO ARBITRATION CENTER

**WIPO Services Under
the UNCITRAL Arbitration Rules**

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I. INTRODUCTION

WIPO Arbitration Center

The World Intellectual Property Organization (WIPO) is an intergovernmental organization with a history of over 110 years. It has 155 member States and is a specialized agency of the United Nations system of organizations. It is located in Geneva, Switzerland.

The WIPO Arbitration Center is an administrative unit of the International Bureau (the secretariat) of WIPO. The Center commenced operations in October 1994.

The Center administers a number of procedures for the resolution of international commercial disputes involving intellectual property, including arbitration pursuant to the WIPO Arbitration Rules.

The Center is counselled in the discharge of its functions by two bodies, the WIPO Arbitration Council and the WIPO Arbitration Consultative Commission.

The *WIPO Arbitration Council* gives advice on matters of planning and policy. Its members are:

Marc **Blessing** Switzerland
Michael **Hoellering** United States of America
Sir Michael **Kerr** United Kingdom
Zentaro **Kitagawa** Japan
Jürgen **Schmid-Dwertmann** Germany
Tang Houzhi China

The *WIPO Arbitration Consultative Commission* provides opinions and advice on non-routine issues on which the Center is required to take a decision in the course of the administration of an arbitration, such as the challenge of an arbitrator. Its members are:

Mohamed **Aboul-Enein** Egypt
Guillermo **Aguilar-Alvarez** Mexico
Gerald **Aksen** United States of America
Sheikh Salah **Al-Hejailan** Saudi Arabia
Sheikha Haya Rashed **Al Khalifa** Bahrain
Austin **Amissah** Ghana
Piero **Bernardini** Italy
Karl-Heinz **Böckstiegel** Germany
Robert **Briner** Switzerland
James **Carter** United States of America
Cheng Dejun China
Joan **Clark** Canada
Bernardo **Cremades** Spain

Yves **Derains** France
 Ulf **Franke** Sweden
 Mayer **Gabay** Israel
 Sudargo **Gautama** Indonesia
 Horacio A. **Grigera Naón** Argentina
 James F. **Henry** United States of America
 Gerold **Herrmann** Germany
 Eva **Horváth** Hungary
 Martin **Hunter** United Kingdom
 Tadashi **Ishikawa** Japan
 François **Knoepfler** Switzerland
 Yoshio **Kumakura** Japan
 Pierre **Lalive** Switzerland
 Martin **Lutz** Switzerland
 Kéba **M'Baye** Senegal
 Werner **Melis** Austria
 Jan **Paulsson** France
 David **Plant** United States of America
 Robert **Raven** United States of America
 Michael Ernst **Schneider** Switzerland
 Hans **Smit** Netherlands
 Sang Hyun **Song** Republic of Korea
 Sir Laurence **Street** Australia
 Yasuhei **Taniguchi** Japan
 Albert Jan **Van Den Berg** Netherlands
 Amos **Wako** Kenya

Further information on the WIPO Arbitration Center and the procedures that it administers may be obtained from the Center at the address given on the back cover of this booklet.

The Center is also prepared to provide services in relation to arbitrations conducted under the UNCITRAL Arbitration Rules which involve intellectual property.

UNCITRAL Arbitration Rules

The UNCITRAL Arbitration Rules were adopted in 1976 by the United Nations Commission on International Trade Law, a commission consisting of member States representing the different legal, economic and social systems and geographic regions of the world. The General Assembly of the United Nations has recommended the use of the UNCITRAL Arbitration Rules for inclusion in international commercial contracts.

Arbitrations conducted under the UNCITRAL Arbitration Rules may proceed more efficiently if an impartial institution is designated to perform certain functions and to provide certain services. The WIPO Arbitration Center may be designated for this purpose. If so designated by the parties, either in the arbitration clause in their contract or in a separate agreement, the Center will:

1. act as appointing authority in cases involving intellectual property that are conducted under the UNCITRAL Arbitration Rules; and
2. provide administrative support services by acting as administrator in relation to such cases.

The following sections of this booklet

- describe the functions of appointing authority under the UNCITRAL Arbitration Rules and the nature of the administrative support services that the WIPO Arbitration Center is, as administrator, prepared to provide (Section II),
- set out the fees charged by the WIPO Arbitration Center for acting as appointing authority or administrator (Section III),
- set out the WIPO schedule of arbitrators' fees (Section IV),
- give recommended contract clauses for designating the WIPO Arbitration Center as appointing authority or administrator (Section V), and
- set out the text of the UNCITRAL Arbitration Rules (Section VI).

II. WIPO SERVICES UNDER THE UNCITRAL ARBITRATION RULES

Appointing Authority

If designated as appointing authority, the WIPO Arbitration Center will perform the following functions envisaged by the UNCITRAL Arbitration Rules:

1. Appointment of Arbitrators

(a) Second Arbitrator in Three-Member Tribunals

Article 7(1) of the UNCITRAL Arbitration Rules provides that, if three arbitrators are to be appointed, each party shall appoint one arbitrator. Where one party has appointed an arbitrator, Article 7(2) provides for the appointing authority, at the request of that party, to appoint the second arbitrator in lieu of the other party if the other party fails to do so within the period of time specified in the Rules.

The WIPO Arbitration Center will, in such circumstances, appoint the second arbitrator directly, that is, without the use of the list procedure provided for in Article 6(3) of the UNCITRAL Arbitration Rules.

(b) Sole or Presiding Arbitrator

Article 6(2) of the UNCITRAL Arbitration Rules provides for the appointing authority to appoint the *sole arbitrator* where the parties themselves do not do so within the period of time specified in those Rules.

Article 7(3) of the UNCITRAL Arbitration Rules provides for the appointing authority to appoint the *presiding arbitrator* where the two other arbitrators do not do so within the period of time specified in those Rules.

An appointing a sole or presiding arbitrator, the WIPO Arbitration Center will use the list procedure provided for in Article 6(3) of the UNCITRAL Arbitration Rules unless, in accordance with Article 6(3), the Center determines in its discretion that the use of the list procedure is not appropriate for the case. In the latter circumstance, the Center will appoint the sole or presiding arbitrator directly. The Center uses a similar list procedure for the appointment of sole or presiding arbitrators in arbitrations administered by it under the WIPO Arbitration Rules.

(c) List of WIPO Arbitrators

The primary resource that will be used by the WIPO Arbitration Center in selecting names for inclusion on the identical list of names to be communicated to the parties in accordance with the list procedure, or in making an appointment in its discretion directly, will be the List of WIPO Arbitrators maintained by the Center. That List comprises persons from all

parts of the world. Details of the professional qualifications, experience and areas of specialization of each person on the List of WIPO Arbitrators are kept by the Center. Where necessary, however, the Center reserves the right to draw upon sources other than its List of Arbitrators in selecting names or making appointments.

In selecting names for the purposes of the list procedure, or in making an appointment directly in its discretion, the Center will examine the particular circumstances of each case in order to ensure that appropriate professional qualifications and experience are possessed either by the persons whose names are included in the identical list communicated to the parties in accordance with the list procedure, or by the arbitrator appointed directly by the Center in its discretion.

2. Challenges of Arbitrators

Article 10 of the UNCITRAL Arbitration Rules provides that an arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence. When such a challenge is contested, Article 12 of those Rules provides for the decision on the challenge to be made by the appointing authority. A decision must similarly be taken by the appointing authority under Article 13(2) where disagreement exists as to whether an arbitrator has failed to act or the performance of the arbitrator's functions has become *de jure* or *de facto* impossible.

When called upon to make such a decision as appointing authority, the WIPO Arbitration Center will constitute an ad hoc committee composed of three members of the WIPO Arbitration Consultative Commission (the members of which are listed in Section I, above) to give a ruling on the challenge. In special circumstances, the Center may appoint an outside expert who is not a member of the Consultative Commission to serve on such an ad hoc committee.

3. Appointment of Substitute Arbitrators

The UNCITRAL Arbitration Rules provide for a substitute arbitrator to be appointed if

- a challenge of an arbitrator by one party is agreed to by the other party (Article 11(3));
- an arbitrator withdraws from office upon being challenged (Article 11(3));
- a contested challenge of an arbitrator is sustained by the appointing authority (Article 12(2));
- an arbitrator dies or resigns during the course of the arbitral proceedings (Article 13(1));
- an arbitrator fails to act or the performance of the arbitrator's functions is *de jure* or *de facto* impossible (Article 13(2)).

In each case, the UNCITRAL Arbitration Rules provide for the substitute arbitrator to be appointed pursuant to the procedure provided for in those Rules that was applicable to the appointment of the arbitrator being replaced. As appointing authority, the WIPO Arbitration Center will, where required to do so, appoint the substitute arbitrator in the manner described above with respect to the appointment of arbitrators.

4. Assistance in Fixing Fees of Arbitrators

Article 39(2) of the UNCITRAL Arbitration Rules provides that, in fixing its fees, the arbitral tribunal shall take into account, to the extent that it considers appropriate in the circumstances of the case, any schedule of fees that the appointing authority has issued for arbitrators in international cases that it administers.

The WIPO Arbitration Rules contain a Schedule of Fees for arbitrators, which is set out in Section IV, below. The Schedule specifies minimum and maximum fees for arbitrators by reference to the amount in dispute. The actual amount of the fees of the arbitrators are, under the WIPO Arbitration Rules, determined by the Center within the applicable range of minimum and maximum fees taking into account the estimated time needed by the arbitrators for conducting the arbitration, the amount in dispute, the complexity of the subject matter of the dispute, the urgency of the case and any other relevant circumstances of the case.

In accordance with Article 39(4) of the UNCITRAL Arbitration Rules, the WIPO Arbitration Center will, where a party so requests, consult with the arbitral tribunal with respect to the determination by the tribunal of its fees.

5. Advisory Comments Regarding Deposits

In accordance with Article 41(3) of the UNCITRAL Arbitration Rules, where a party so requests, the WIPO Arbitration Center will consult with the arbitral tribunal with respect to the determination by the tribunal of the amounts of any deposits of costs or supplementary deposits of costs.

Administrative Services

If designated as administrator in addition to being designated as appointing authority, the WIPO Arbitration Center will provide the following administrative services:

1. Communications

Upon request, all communications and notices from a party to the arbitral tribunal (except at meetings and hearings) may be directed to the Center, which will transmit them to the arbitral tribunal and to the other party.

The agreement of the parties that the Center will act as administrator shall constitute consent by the parties that, for the purpose of the application of the UNCITRAL Arbitration Rules, written communications shall be deemed to have been received by the addressee when received by the Center.

Communications transmitted by the Center to a party will be sent to the address of that party set out in the Notice of Arbitration or to such other address as that party may notify in writing to the Center.

2. Hearings

Upon request, the Center will liaise with the arbitral tribunal and the parties to establish the date, time and place of meetings and hearings.

3. Hearing Room and Party Rooms

The Center will provide a room for hearings and party retiring rooms for arbitrations conducted in Geneva and will assist in arranging hearing rooms for arbitrations conducted elsewhere. No separate charge will be made for the provision of such rooms at WIPO in Geneva. Where the Center assists in arranging hearing rooms outside Geneva, however, the cost of such rooms must be paid by the parties.

4. Deposits

Upon request, the Center will hold deposits from the parties as advances on the costs of the arbitration, will administer those deposits and will account for them.

5. Registration of Awards

Upon request, the Center will assist in the filing or registration of arbitral awards in countries where such filing or registration is required by law.

6. Other Services

Upon request, the Center will provide other additional administrative services, which will be billed separately on the basis of the cost to the Center of the service. Such additional services include

- arranging for transcription services and interpretation;
- photocopying;
- secretarial assistance;
- telephone, telefax and other communication facilities.

III. FEES FOR WIPO SERVICES UNDER THE UNCITRAL ARBITRATION RULES

(All amounts are in United States dollars)

Appointing Authority

For services as appointing authority only

US\$750

Note

If the Center is notified that a case has been settled or withdrawn before it makes an appointment, the amount of US\$500 will be refunded.

Appointing Authority and Administrator

For services as both appointing authority and administrator, a registration fee and an administration fee are payable to the WIPO Arbitration Center.

Registration Fee

The amount of the registration fee is calculated by reference to the amount of the claim in accordance with the Schedule of Registration Fees set out below.

The registration fee is payable by the Claimant at the time of filing of the Notice of Arbitration. It is not refundable. No action will be taken by the Center on a Notice of Arbitration until the registration fee has been paid.

Schedule of Registration Fees

Amount of Claim

Registration Fee

Up to \$1,000,000

\$1,000

\$1,000,001 to \$10,000,000

\$2,000

Over \$10,000,000

\$3,000

Explanatory Notes

1. Where the amount of the claim is not specified at the time of submitting the Notice of Arbitration, a registration fee of \$1,000 shall be payable, subject to adjustment when the Statement of Claim is filed.
2. Where a claim is not for a monetary amount, a registration fee of \$1,000 shall be payable, subject to adjustment. The adjustment shall be made by reference to the registration fee that the Center, upon examination of the Notice of Arbitration or the Statement of Claim, determines to be appropriate in the circumstances.
3. The amount of claims expressed in currencies other than United States dollars shall, for the purposes of calculating the registration fee, be converted to amounts expressed in United States dollars on the basis of the official United Nations exchange rate prevailing on the date of submission of the Notice of Arbitration.

Administration Fee

An administration fee is payable in respect of each claim and counterclaim. The amount of the administration fee is calculated by reference to the amount of the claim or counterclaim in accordance with the Schedule of Administration Fees set out below.

The administration fee is payable by the Claimant within 30 days after the commencement of the arbitration. The Center will notify the Claimant of the amount of the administration fee as soon as possible after receipt of the Notice of Arbitration.

In the case of a counterclaim, the administration fee is payable by the Respondent within days after the date on which the counterclaim is made. The Center will notify the Respondent of the amount of the administration fee as soon as possible after receipt of notification of the counterclaim.

Schedule of Administration Fees

<i>Amount of Claim or Counterclaim</i>	<i>Administration Fee</i>
Up to \$100,000	\$1,000
\$100,001 to \$1,000,000	1,000+0.40% (of the amount above \$100,000)
\$1,000,001 to \$5,000,000	\$4,600+0.20% (of the amount above \$1,000,000)
\$5,000,001 to \$20,000,000	\$12,600+0.10% (of the amount above \$5,000,000)
Over \$20,000,000	\$27,600+0.05% (of the amount above \$20,000,000 up to a <i>maximum</i> administration fee of \$35,000)

Explanatory Notes

1. Where a claim or counterclaim is not for a monetary amount, the Center shall determine an appropriate administration fee.
2. For the purpose of calculating the administration fee, the percentage figures are applied to each successive part of the amount of claim or counterclaim. For example, if the amount of claim is \$5,000,000, the administration fee would be calculated as follows:

\$100,000			\$1,000
\$900,000 (difference between \$100,000 and \$1,000,000)		0.40%	\$3,600
\$4,000,000 (difference between \$1,000,000 and \$5,000,000)		0.20%	\$8,000
\$5,000,000			\$12,600

3. The maximum administration fee payable is \$35,000.
4. The amounts of claims or counterclaims expressed in currencies other than United States dollars shall, for the purposes of calculating the administration fee, be converted to amounts expressed in United States dollars on the basis of the official United Nations exchange rate prevailing on the date of submission of the claim or of the counterclaim, respectively.

IV. WIPO SCHEDULE OF ARBITRATORS' FEES

For the purpose of Article 39(2) of the UNCITRAL Arbitration Rules (see page 10, above) the schedule of arbitrators' fees under the WIPO Arbitration Rules is set out on the following page. All amounts are in United States dollars. The following Explanatory Notes apply to the Schedule:

Explanatory Notes

1. For the purpose of calculating the amount of claims, the value of any counterclaim is added to the amount of the claim.
2. For the purpose of calculating the minimum and maximum amounts of the arbitrators' fees, the percentage figures are applied to each successive part of the whole amount of claims. For example, if the amount of claim is \$1,500,000, the minimum fees for a sole arbitrator would be calculated as follows:

\$100,000		\$2,000
\$400,000 (difference between \$100,000 and \$500,000)	2.00%	\$8,000
\$500,000 (difference between \$500,000 and \$1,000,000)	1.50%	\$7,500
\$500,000 (difference between \$1,000,000 and \$1,500,000)	1.00%	<u>\$5,000</u>
\$1,500,000		\$22,500

3. Where a claim or counterclaim is not for a monetary amount, the Center shall, in consultation with the arbitrators and the parties, determine an appropriate value for the claim or counterclaim for the purpose of determining the arbitrators' fees.
4. The amounts of claims or counterclaims expressed in currencies other than United States dollars shall, for the purpose of determining the arbitrators' fees, be converted to amounts expressed in United States dollars on the basis of the official United Nations exchange rate prevailing on the date of submission of the claim or of the counterclaim, respectively.
5. The amounts and percentage figures specified in the Table for a three-person Tribunal represent the total fees payable to such a Tribunal, and not the fees payable to each arbitrator. Such fees shall be distributed between the three persons in accordance with the unanimous decision of those three persons. In the absence of such a decision, the distribution shall be 40 per cent for the presiding arbitrator, and 30 per cent for each of the other two arbitrators.
6. Where, by the agreement of the parties, a number of arbitrators other than one or three is appointed to a Tribunal, the scale of minimum and maximum fees for the Tribunal in question shall be determined by the Center. That scale shall be so determined by multiplying the scale for a sole arbitrator by the number of arbitrators reduced by a factor that takes account of the sharing of work and responsibility among the arbitrators.

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V. MODEL CONTRACT CLAUSES FOR WIPO SERVICES UNDER THE UNCITRAL ARBITRATION RULES

The following clauses may be used in contracts by parties wishing to submit disputes under the contracts to arbitration in accordance with the UNCITRAL Arbitration Rules and to have the WIPO Arbitration Center act either as appointing authority alone or as both appointing authority and administrator:

WIPO Arbitration Center as Appointing Authority

“Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.

The appointing authority shall be the WIPO Arbitration Center.”

Note: Parties may wish to consider adding:

- (a) The number of arbitrators shall be ... [one or three].
- (b) The place of arbitration shall be ... [town or country].
- (c) The language(s) to be used in the arbitral proceedings shall be ...

WIPO Arbitration Center as Appointing Authority and Administrator

“Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.

The WIPO Arbitration Center shall act as appointing authority and provide administrative services in accordance with its administrative procedures for cases under the UNCITRAL Arbitration Rules.”

Note: Parties may wish to consider adding:

- (a) The number of arbitrators shall be ... [one or three].
- (b) The place of arbitration shall be ... [town or country].
- (c) The language(s) to be used in the arbitral proceedings shall be ...

VI. UNCITRAL ARBITRATION RULES

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RESOLUTION 31/98 ADOPTED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 15 DECEMBER 1976

31/98. Arbitration Rules of the United Nations Commission on International Trade Law

The General Assembly,

Recognizing the value of arbitration as a method of settling disputes arising in the context of international commercial relations,

Being convinced that the establishment of rules for ad hoc arbitration that are acceptable in countries with different legal, social and economic systems would significantly contribute to the development of harmonious international economic relations,

Bearing in mind that the Arbitration Rules of the United Nations Commission on International Trade Law have been prepared after extensive consultation with arbitral institutions and centres of international commercial arbitration,

Noting that the Arbitration Rules were adopted by the United Nations Commission on International Trade Law at its ninth session¹ after due deliberation,

1. Recommends the use of the Arbitration Rules of the United Nations Commission on International Trade Law in the settlement of disputes arising in the context of international commercial relations, particularly by reference to the Arbitration Rules in commercial contracts;
2. Requests the Secretary-General to arrange for the widest possible distribution of the Arbitration Rules.

¹ *Official Records of the General Assembly, Thirty-first Session, Supplement N/ 17 (A/31/17), Chapter V, Section C.*

UNCITRAL ARBITRATION RULES

Section I: Introductory Rules

SCOPE OF APPLICATION

Article 1

1. Where the parties to a contract have agreed in writing² that disputes in relation to that contract shall be referred to arbitration under the UNCITRAL Arbitration Rules, then such disputes shall be settled in accordance with these Rules subject to such modification as the parties may agree in writing.
2. These Rules shall govern the arbitration except that where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

NOTICE, CALCULATION OF PERIODS OF TIME

Article 2

1. For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received if it is physically delivered to the addressee or if it is delivered at his habitual residence, place of business or mailing address, or, if none of these can be found after making reasonable inquiry, then at the addressee's last-known residence or place of business. Notice shall be deemed to have been received on the day it is so delivered.
2. For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

² MODEL ARBITRATION CLAUSE

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.

Note - Parties may wish to consider adding:

- (a) The appointing authority shall be ... (name of institution or person);
- (b) The number of arbitrators shall be ... (one or three);
- (c) The place of arbitration shall be ... (town or country);
- (d) The language(s) to be used in the arbitral proceedings shall be ...

NOTICE OF ARBITRATION

Article 3

1. The party initiating recourse to arbitration (hereinafter called the "claimant") shall give to the other party (hereinafter called the "respondent") a notice of arbitration.
2. Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the respondent.
3. The notice of arbitration shall include the following:
 - (a) A demand that the dispute be referred to arbitration;
 - (b) The names and addresses of the parties;
 - (c) A reference to the arbitration clause or the separate arbitration agreement that is invoked;
 - (d) A reference to the contract out of or in relation to which the dispute arises;
 - (e) The general nature of the claim and an indication of the amount involved, if any;
 - (f) The relief or remedy sought;
 - (g) A proposal as to the number of arbitrators (i.e. one or three), if the parties have not previously agreed thereon.
4. The notice of arbitration may also include:
 - (a) The proposals for the appointments of a sole arbitrator and an appointing authority referred to in Article 6, paragraph 1;
 - (b) The notification of the appointment of an arbitrator referred to in Article 7;
 - (c) The statement of claim referred to in Article 18.

REPRESENTATION AND ASSISTANCE

Article 4

The parties may be represented or assisted by persons of their choice. The names and addresses of such persons must be communicated in writing to the other party; such communication must specify whether the appointment is being made for purposes of representation or assistance.

Section II: Composition of the Arbitral Tribunal

NUMBER OF ARBITRATORS

Article 5

If the parties have not previously agreed on the number of arbitrators (i.e. one or three), and if within fifteen days after the receipt by the respondent of the notice of arbitration the parties have not agreed that there shall be only one arbitrator, three arbitrators shall be appointed.

APPOINTMENT OF ARBITRATORS (Articles 6 to 8)

Article 6

1. If a sole arbitrator is to be appointed, either party may propose to the other:

- (a) The names of one or more persons, one of whom would serve as the sole arbitrator; and
- (b) If no appointing authority has been agreed upon by the parties, the name or names of one or more institutions or persons, one of whom would serve as appointing authority.

2. If within thirty days after receipt by a party of a proposal made in accordance with paragraph 1 the parties have not reached agreement on the choice of a sole arbitrator, the sole arbitrator shall be appointed by the appointing authority agreed upon by the parties. If no appointing authority has been agreed upon by the parties, or if the appointing authority agreed upon refuses to act or fails to appoint the arbitrator within sixty days of the receipt of a party's request therefor, either party may request the Secretary-General of the Permanent Court of Arbitration at The Hague to designate an appointing authority.

3. The appointing authority shall, at the request of one of the parties, appoint the sole arbitrator as promptly as possible. In making the appointment the appointing authority shall use the following list procedure, unless both parties agree that the list procedure should not be used or unless the appointing authority determines in its discretion that the use of the list-procedure is not appropriate for the case:

- (a) At the request of one of the parties the appointing authority shall communicate to both parties an identical list containing at least three names;
- (b) Within fifteen days after the receipt of this list, each party may return the list to the appointing authority after having deleted the name or names to which he objects and numbered the remaining names on the list in the order of his preference;
- (c) After the expiration of the above period of time the appointing authority shall appoint the sole arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties;
- (d) If for any reason the appointment cannot be made according to this procedure, the appointing authority may exercise its discretion in appointing the sole arbitrator.

4. In making the appointment, the appointing authority shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account as well the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.

Article 7

1. If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the tribunal.

2. If within thirty days after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator he has appointed:

(a) The first party may request the appointing authority previously designated by the parties to appoint the second arbitrator; or

(b) If no such authority has been previously designated by the parties, or if the appointing authority previously designated refuses to act or fails to appoint the arbitrator within thirty days after receipt of a party's request therefor, the first party may request the Secretary-General of the Permanent Court of Arbitration at The Hague to designate the appointing authority. The first party may then request the appointing authority so designated to appoint the second arbitrator. In either case, the appointing authority may exercise its discretion in appointing the arbitrator.

3. If within thirty days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be appointed by an appointing authority in the same way as a sole arbitrator would be appointed under Article 6.

Article 8

1. When an appointing authority is requested to appoint an arbitrator pursuant to Article 6 or Article 7, the party which makes the request shall send to the appointing authority a copy of the notice of arbitration, a copy of the contract out of or in relation to which the dispute has arisen and a copy of the arbitration agreement if it is not contained in the contract. The appointing authority may require from either party such information as it deems necessary to fulfil its function.

2. Where the names of one or more persons are proposed for appointment as arbitrators, their full names, addresses and nationalities shall be indicated, together with a description of their qualifications.

CHALLENGE OF ARBITRATORS (Articles 9 to 12)

Article 9

A prospective arbitrator shall disclose to those who approach him in connexion with his possible appointment any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, once appointed or chosen, shall disclose such circumstances to the parties unless they have already been informed by him of these circumstances.

Article 10

1. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.
2. A party may challenge the arbitrator appointed by him only for reasons of which he becomes aware after the appointment has been made.

Article 11

1. A party who intends to challenge an arbitrator shall send notice of his challenge within fifteen days after the appointment of the challenged arbitrator has been notified to the challenging party or within fifteen days after the circumstances mentioned in Articles 9 and 10 became known to that party.
2. The challenge shall be notified to the other party, to the arbitrator who is challenged and to the other members of the arbitral tribunal. The notification shall be in writing and shall state the reasons for the challenge.
3. When an arbitrator has been challenged by one party, the other party may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his office. In neither case does this imply acceptance of the validity of the grounds for the challenge. In both cases the procedure provided in Article 6 or 7 shall be used in full for the appointment of the substitute arbitrator, even if during the process of appointing the challenged arbitrator a party had failed to exercise his right to appoint or to participate in the appointment.

Article 12

1. If the other party does not agree to the challenge and the challenged arbitrator does not withdraw, the decision on the challenge will be made:
 - (a) (a)When the initial appointment was made by an appointing authority, by that authority;
 - (b) (b)When the initial appointment was not made by an appointing authority, but an appointing authority has been previously designated, by that authority;
 - (c) (c)In all other cases, by the appointing authority to be designated in accordance with the procedure for designating an appointing authority as provided for in Article 6.

2. If the appointing authority sustains the challenge, a substitute arbitrator shall be appointed or chosen pursuant to the procedure applicable to the appointment or choice of an arbitrator as provided in Articles 6 to 9 except that, when this procedure would call for the designation of an appointing authority, the appointment of the arbitrator shall be made by the appointing authority which decided on the challenge.

REPLACEMENT OF AN ARBITRATOR

Article 13

1. In the event of the death or resignation of an arbitrator during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in Articles 6 to 9 that was applicable to the appointment or choice of the arbitrator being replaced.

2. In the event that an arbitrator fails to act or in the event of the de jure or de facto impossibility of his performing his functions, the procedure in respect of the challenge and replacement of an arbitrator as provided in the preceding Articles shall apply.

REPETITION OF HEARINGS IN THE EVENT OF THE REPLACEMENT OF AN ARBITRATOR

Article 14

If under Articles 11 to 13 the sole or presiding arbitrator is replaced, any hearings held previously shall be repeated; if any other arbitrator is replaced, such prior hearings may be repeated at the discretion of the arbitral tribunal.

Section III: Arbitral Proceedings

GENERAL PROVISIONS

Article 15

1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting his case.

2. If either party so requests at any stage of the proceedings, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.

3. All documents or information supplied to the arbitral tribunal by one party shall at the same time be communicated by that party to the other party.

PLACE OF ARBITRATION

Article 16

1. Unless the parties have agreed upon the place where the arbitration is to be held, such place shall be determined by the arbitral tribunal, having regard to the circumstances of the arbitration.

2. The arbitral tribunal may determine the locale of the arbitration within the country agreed upon by the parties. It may hear witnesses and hold meetings for consultation among its members at any place it deems appropriate, having regard to the circumstances of the arbitration.

3. The arbitral tribunal may meet at any place it deems appropriate for the inspection of goods, other property or documents. The parties shall be given sufficient notice to enable them to be present at such inspection.

4. The award shall be made at the place of arbitration.

LANGUAGE

Article 17

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

2. The arbitral tribunal may order that any documents annexed to the statement of claim or statement of defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

STATEMENT OF CLAIM

Article 18

1. Unless the statement of claim was contained in the notice of arbitration, within a period of time to be determined by the arbitral tribunal, the claimant shall communicate his statement of claim in writing to the respondent and to each of the arbitrators. A copy of the contract, and of the arbitration agreement if not contained in the contract, shall be annexed thereto.

2. The statement of claim shall include the following particulars:

- (a) The names and addresses of the parties;
- (b) A statement of the facts supporting the claim;
- (c) The points at issue;
- (d) The relief or remedy sought.

The claimant may annex to his statement of claim all documents he deems relevant or may add a reference to the documents or other evidence he will submit.

STATEMENT OF DEFENCE

Article 19

1. Within a period of time to be determined by the arbitral tribunal, the respondent shall communicate his statement of defence in writing to the claimant and to each of the arbitrators.

2. The statement of defence shall reply to the particulars (b), (c) and (d) of the statement of claim (Article 18, paragraph 2). The respondent may annex to his statement the documents on which he relies for his defence or may add a reference to the documents or other evidence he will submit.

3. In his statement of defence, or at a later stage in the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counterclaim arising out of the same contract or rely on a claim arising out of the same contract for the purpose of a set-off.

4. The provisions of Article 18, paragraph 2, shall apply to a counterclaim and a claim relied on for the purpose of a set-off.

AMENDMENTS TO THE CLAIM OR DEFENCE

Article 20

During the course of the arbitral proceedings either party may amend or supplement his claim or defence unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances. However, a claim may not be amended in such a manner that the amended claim falls outside the scope of the arbitration clause or separate arbitration agreement.

PLEAS AS TO THE JURISDICTION OF THE ARBITRAL TRIBUNAL

Article 21

1. The arbitral tribunal shall have the power to rule on objections that it has no jurisdiction, including any objections with respect to the existence or validity of the arbitration clause or of the separate arbitration agreement.
2. The arbitral tribunal shall have the power to determine the existence or the validity of the contract of which an arbitration clause forms a part. For the purposes of Article 21, an arbitration clause which forms part of a contract and which provides for arbitration under these Rules shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.
3. A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than in the statement of defence or, with respect to a counterclaim, in the reply to the counterclaim.
4. In general, the arbitral tribunal should rule on a plea concerning its jurisdiction as a preliminary question. However, the arbitral tribunal may proceed with the arbitration and rule on such a plea in their final award.

FURTHER WRITTEN STATEMENTS

Article 22

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

PERIODS OF TIME

Article 23

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

EVIDENCE AND HEARINGS (Articles 24 and 25)

Article 24

1. Each party shall have the burden of proving the facts relied on to support his claim or defence.
2. The arbitral tribunal may, if it considers it appropriate, require a party to deliver to the tribunal and to the other party, within such a period of time as the arbitral tribunal shall decide, a summary of the documents and other evidence which that party intends to present in support of the facts in issue set out in his statement of claim or statement of defence.
3. At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the tribunal shall determine.

Article 25

1. In the event of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof.
2. If witnesses are to be heard, at least fifteen days before the hearing each party shall communicate to the arbitral tribunal and to the other party the names and addresses of the witnesses he intends to present, the subject upon and the languages in which such witnesses will give their testimony.
3. The arbitral tribunal shall make arrangements for the translation of oral statements made at a hearing and for a record of the hearing if either is deemed necessary by the tribunal under the circumstances of the case, or if the parties have agreed thereto and have communicated such agreement to the tribunal at least fifteen days before the hearing.
4. Hearings shall be held in camera unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses during the testimony of other witnesses. The arbitral tribunal is free to determine the manner in which witnesses are examined.

5. Evidence of witnesses may also be presented in the form of written statements signed by them.
6. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

INTERIM MEASURES OF PROTECTION

Article 26

1. At the request of either party, the arbitral tribunal may take any interim measures it deems necessary in respect of the subject-matter of the dispute, including measures for the conservation of the goods forming the subject-matter in dispute, such as ordering their deposit with a third person or the sale of perishable goods.
2. Such interim measures may be established in the form of an interim award. The arbitral tribunal shall be entitled to require security for the costs of such measures.
3. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

EXPERTS

Article 27

1. The arbitral tribunal may appoint one or more experts to report to it, in writing, on specific issues to be determined by the tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.
2. The parties shall give the expert any relevant information or produce for his inspection any relevant documents or goods that he may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.
3. Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties who shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his report.
4. At the request of either party the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing either party may present expert witnesses in order to testify on the points at issue. The provisions of Article 25 shall be applicable to such proceedings.

DEFAULT

Article 28

1. If, within the period of time fixed by the arbitral tribunal, the claimant has failed to communicate his claim without showing sufficient cause for such failure, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings. If, within the period of time fixed by the arbitral tribunal, the respondent has failed to communicate his statement of defence without showing sufficient cause for such failure, the arbitral tribunal shall order that the proceedings continue.
2. If one of the parties, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.
3. If one of the parties, duly invited to produce documentary evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

CLOSURE OF HEARINGS

Article 29

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

WAIVER OF RULES

Article 30

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

Section IV: The Award

DECISIONS

Article 31

1. When there are three arbitrators, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators.
2. In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorizes, the presiding arbitrator may decide on his own, subject to revision, if any, by the arbitral tribunal.

FORM AND EFFECT OF THE AWARD

Article 32

1. In addition to making a final award, the arbitral tribunal shall be entitled to make interim, interlocutory, or partial awards.
2. The award shall be made in writing and shall be final and binding on the parties. The parties 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 are to be given.
4. An award shall be signed by the arbitrators and it shall contain the date on which and the place where the award was made. Where there are three arbitrators and one of them fails to sign, the award shall state the reason for the absence of the signature.
5. The award may be made public only with the consent of both parties.
6. Copies of the award signed by the arbitrators shall be communicated to the parties by the arbitral tribunal.
7. If the arbitration law of the country where the award is made requires that the award be filed or registered by the arbitral tribunal, the tribunal shall comply with this requirement within the period of time required by law.

APPLICABLE LAW, AMIABLE COMPOSITEUR

Article 33

1. The arbitral tribunal shall apply the law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.
2. The arbitral tribunal shall decide as amiable compositeur or ex aequo et bono only if the parties have expressly authorized the arbitral tribunal to do so and if the law applicable to the arbitral procedure permits such arbitration.
3. In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

SETTLEMENT OR OTHER GROUNDS FOR TERMINATION

Article 34

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by both parties and accepted by the tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.
2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless a party raises justifiable grounds for objection.
3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties. Where an arbitral award on agreed terms is made, the provisions of Article 32, paragraphs 2 and 4 to 7, shall apply.

INTERPRETATION OF THE AWARD

Article 35

1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request that the arbitral tribunal give an interpretation of the award.
2. The interpretation shall be given in writing within forty-five days after the receipt of the request. The interpretation shall form part of the award and the provisions of Article 32, paragraphs 2 to 7, shall apply.

CORRECTION OF THE AWARD

Article 36

1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The arbitral tribunal may within thirty days after the communication of the award make such corrections on its own initiative.
2. Such corrections shall be in writing, and the provisions of Article 32, paragraphs 2 to 7, shall apply.

ADDITIONAL AWARD

Article 37

1. Within thirty days after the receipt of the award, either party, with notice to the other 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. If the arbitral tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall complete its award within sixty days after the receipt of the request.
3. When an additional award is made, the provisions of Article 32, paragraphs 2 to 7, shall apply.

COSTS (Articles 38 to 40)

Article 38

The arbitral tribunal shall fix the costs of arbitration in its award. The term "costs" includes only:

- (a) The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself in accordance with Article 39;
- (b) The travel and other expenses incurred by the arbitrators;
- (c) The costs of expert advice and of other assistance required by the arbitral tribunal;
- (d) The travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;
- (e) The costs for legal representation and assistance of the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;
- (f) Any fees and expenses of the appointing authority as well as the expenses of the Secretary-General of the Permanent Court of Arbitration at The Hague.

Article 39

1. The fees of the arbitral tribunal shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject-matter, the time spent by the arbitrators and any other relevant circumstances of the case.
2. If an appointing authority has been agreed upon by the parties or designated by the Secretary-General of the Permanent Court of Arbitration at The Hague, and if that authority has issued a schedule of fees for arbitrators in international cases which it administers, the arbitral tribunal in fixing its fees shall take that schedule of fees into account to the extent that it considers appropriate in the circumstances of the case.
3. If such appointing authority has not issued a schedule of fees for arbitrators in international cases, 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.
4. In cases referred to in paragraphs 2 and 3, when a party so requests and the appointing authority consents to perform the function, the arbitral tribunal shall fix its fees only after consultation with the appointing authority which may make any comment it deems appropriate to the arbitral tribunal concerning the fees.

Article 40

1. Except as provided in paragraph 2, the costs of arbitration shall in principle be borne by the unsuccessful party. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.
2. With respect to the costs of legal representation and assistance referred to in Article 38, paragraph (e), the arbitral tribunal, taking into account the circumstances of the case, shall be free to determine which party shall bear such costs or may apportion such costs between the parties if it determines that apportionment is reasonable.
3. When the arbitral tribunal issues an order for the termination of the arbitral proceedings or makes an award on agreed terms, it shall fix the costs of arbitration referred to in Article 38 and Article 39, paragraph 1, in the text of that order or award.
4. No additional fees may be charged by an arbitral tribunal for interpretation or correction or completion of its award under Articles 35 to 37.

DEPOSIT OF COSTS

Article 41

1. The arbitral tribunal, on its establishment, may request each party to deposit an equal amount as an advance for the costs referred to in Article 38, paragraphs (a), (b) and (c).
2. During the course of the arbitral proceedings the arbitral tribunal may request supplementary deposits from the parties.
3. If an appointing authority has been agreed upon by the parties or designated by the Secretary-General of the Permanent Court of Arbitration at The Hague, and when a party so requests and the appointing authority consents to perform the function, the arbitral tribunal shall fix the amounts of any deposits or supplementary deposits only after consultation with the appointing authority which may make any comments to the arbitral tribunal which it deems appropriate concerning the amount of such deposits and supplementary deposits.
4. If the required deposits are not paid in full within thirty days after the receipt of the request, the arbitral tribunal shall so inform the parties in order that one or another of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.
5. After the award has been made, the arbitral tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

Further information may be obtained from:

WIPO Arbitration Center
Director: Francis Gurry
34, chemin des Colombettes
1211 Geneva 20
Switzerland

Telephone: (41-22) 730 9111
Facsimile: (41-22) 733 5428 (WIPO)
(41-22) 740 3700 (Direct to Center)

* * * * *

WIPO Liaison Office in New York
2, United Nations Plaza
Room 560 (5th Floor)
New York NY 10017
United States of America

Telephone: (1-212) 963 6813
Facsimile: (1-212) 963 4801