



## **RULES OF ARBITRATION**

### **SECTION 1. GENERAL PROVISIONS**

#### **Article 1. Objectives and Scope of Application of Rules**

1. Pursuant to Article 3 of the Articles of Association, it is one of the objectives of the Bureau of International Recycling (B.I.R.) to encourage and assist with the amicable settlement of disputes of an international nature between companies active in the recycling industry. The present Rules of Arbitration are focused on achieving this objective and to provide members with a fast and effective tool to resolve disputes by providing arbitration services to its members.

2. Parties may combine the arbitration procedures with an attempt of conciliation in accordance with the provisions of Articles 37 and seq.

#### **Article 2. Definitions**

1. For the purpose of these Arbitration Rules (“The Rules”) and unless explicitly stated otherwise, the following capitalised terms and expressions shall have the following meaning:

- (i) “Association” means the international non-profit association named the Bureau of International Recycling, abbreviate as B.I.R.;
- (ii) “Arbitral Tribunal” being the panel who will render a ruling (Award) in the dispute submitted to it. It includes the sole Arbitrator or three Arbitrators according to the choice of the parties;
- (iii) “Arbitration Committee” means the body established by its Chairman and by the Vice-Chairmen;
- (iv) “Chairman of the Arbitration Committee” means the Chairman who has been appointed by the President of the Association;
- (v) “Vice-Chairman” of the Arbitration Committee means the respective President of each Commodity Division and the chairman of each Commodity Committee;
- (vi) “Arbitration Panel” means the panel of individuals which are eligible to act as arbitrators pursuant to the Rules. The Panel is divided into sub-panels

composed of experts of the respective Commodity Divisions and Commodity Committees and chaired by the respective Vice-Chairmen of the Arbitration Committee;

- (vii) “Arbitration Agreement” means an agreement by the parties to submit to arbitration by BIR under the Rules all or certain disputes which have arisen or which may arise between them; an Arbitration Agreement may derive from an arbitration clause in a contract or be provided in a separate contract;
- (viii) “Rules” means the current Rules of Arbitration;
- (ix) “Claimant” means one or more parties initiating an arbitration;
- (x) “Respondent” means one or more parties against which the arbitration is initiated, as named in the Request for Arbitration;
- (xi) “The Registrar” means the Director General of BIR, or his/her designee, who shall act as the arbitration secretariat;
- (xii) “Award” includes, *inter alia*, an interim, conservatory, partial or final Award.

2. Words used in the singular include the plural and vice versa, as the context may require.

### **Article 3. The Arbitration Committee and the Arbitration Panel**

1. The president of each Commodity Division and the chairman of each Commodity Committee of BIR shall be, for the entire duration of their mandate, *ipso jure* (automatically) Vice-Chairmen of the Arbitration Committee and members of the Arbitration Panel.

2. Meetings of the Arbitration Committee shall be called by the Chairman of the Arbitration Committee or by 5 members of the Arbitration Committee acting jointly.

3. The Chairman of the Arbitration Committee shall report at least once a year to the Advisory Council of the Executive Committee of the Association on the number of arbitrations related to each commodity sector.

4. Each Commodity Division and each Commodity Committee may through their respective boards nominate members of the Association to be co-opted commodity expert members of the respective sub-panels of the Arbitration Panel of eligible arbitrators. The latter nominations will be effective once approved by the majority of the present or represented members of the Arbitration Committee gathered in a meeting. The members shall not be required to state reasons for their votes;

5. The dismissal of the co-opted members of the Arbitration Committee is decided by the respective Vice-Chairmen of the Arbitration Committee.

6. The Chairman of the Arbitration Committee will be kept informed of any application for BIR arbitration and of the Award.

7. The Arbitration Committee has jurisdiction to rule on the interpretation of the Rules. The Registrar or any Arbitral Tribunal may seek its opinion which will be binding upon the parties and the Arbitral Tribunal at stake.

8. The Chairman of the Arbitration Committee decides, depending on the matter submitted to the Arbitration Committee how the latter should be called and whether or not there will be a physical meeting of the Arbitration Committee.

9. The Arbitration Committee shall, to the extent possible, decide on a consensus basis. In case of dissenting opinions, unless at least 80 % of the members of the Arbitration Committee, having voted including the votes casted by proxies, have expressed a common view, the opinion of the Chairman of the Arbitration Committee when the matter concerns the Arbitration Committee as a whole or the respective Vice-Chairman when the matter concerns a specific Commodity Division or Commodity Committee shall prevail. The position expressed by these members shall then prevail. The decisions of the Arbitration Committee will be binding provided that the majority of the members of the Arbitration Committee, possibly represented by another member or for the Vice Chairmen by the Vice President of his Commodity Division or of his Commodity Committee, have participated to the decision process. A member may represent a maximum of two members.

## **SECTION 2. COMMENCEMENT OF THE ARBITRATION**

### **Article 4. Application and Request for Arbitration**

1. A party to a written contract may apply for BIR arbitration by filing the Request for Arbitration with the Registrar, provided an Arbitration clause has been mentioned in the contract and provided at least one of such parties is a member of the Association.

2. Parties involved in any dispute may apply for BIR arbitration by filing a Request for Arbitration with the Registrar, provided a mutual agreement has been concluded between the parties and provided at least one of such parties is a member of the Association.

3. The Request for Arbitration shall include, *inter alia*, the following information:

- (i) the full name, VAT number or equivalent, address of each of the parties and of the counsel(s) of the Claimant;
- (ii) accurate and concise statement of the matter; sufficient description of the goods involved;
- (iii) to the extent possible, an indication of any amount(s) involved;
- (iv) the Arbitration Agreement;
- (v) all relevant particulars concerning the number of Arbitrators and their choice in accordance with the provisions of Articles 7 and seq.;
- (vi) any comments as to the venue of arbitration, the applicable rules of law to the proceedings and the merits of the case, and the language of arbitration;
- (vii) any observations that the Claimant considers useful.

- (viii) a copy of the banking powers of the signatory(ies) of the Request for Arbitration and evidence of the relevant part of the by-laws governing the representation of the Claimant.

Without prejudice of Article 17, the failure to annex or refer to a document will not in itself preclude from using that document in the arbitration proceedings.

4. The Request for Arbitration shall be submitted to the Registrar in as many copies as requested by the Registrar. By default as many copies as parties involved plus one shall be sent to the Registrar. When the formalities are found to be completed by the Registrar, it shall notify the Claimant and the Respondent of the receipt of the Request and the date of such receipt.
5. Along with the Request for Arbitration, the Claimant shall pay the Registration Fee required by Article 51.
6. The date on which the Registrar has received the Request for Arbitration, the annexes thereto and the payment of the Registration Fee, shall be deemed to be the date of commencement of the arbitral proceedings.
7. When the Claimant submits a Request for Arbitration closely related with a pending arbitration proceedings between the same parties, the Chairman of the Arbitration Committee may, after consultation of the Presiding Arbitrator of the pending arbitration proceedings, at the request of a party, decide to add the claims contained in the Request to the pending proceedings provided that the Terms of Reference have not been signed.

#### **Article 5. Answer to the Request for Arbitration and Counterclaims**

1. Within 15 days from the receipt of the Request from the Registrar, the Respondent shall file an answer (the “Answer”) which shall, *inter alia*, contain the following information:
  - (i) its full name, VAT number or equivalent, its address and address of its counsel(s);
  - (ii) possibly its comments as to the nature and circumstances of the dispute giving rise to the claim(s);
  - (iii) any comments concerning the number of Arbitrators and their choice in light of the Claimant’s proposals and in accordance with the provisions of Articles 7 and seq.;
  - (iv) any comments as to the venue of arbitration, the applicable rules of law and the language of the arbitration proceedings;
  - (v) any appointment that is required by, or observations that the Respondent considers useful.
  - (vi) a copy of the banking powers of the signatory(ies) of the Answer and evidence of the relevant part of the by-laws governing the representation of the Respondent.

2. The Registrar may grant the Respondent a deadline extension for filing the Answer.
3. The Answer shall be submitted to the Registrar in as many copies as requested by the Registrar and a copy of the Answer shall be communicated by the Registrar to the Claimant. By default as many copies as parties involved plus one shall be sent to the Registrar.
4. Any counterclaim(s) made by the Respondent shall be filed with its Answer and shall provide:
  - (i) a description of the nature and circumstances of the dispute giving rise to the counterclaim(s); and
  - (ii) a statement of the relief sought, including, to the extent possible, an indication of any amount(s) counterclaimed.
5. Should the Respondent fail to abide with the deadlines of this Article the Arbitration proceedings shall proceed forward.

#### **Article 6. The Arbitration Agreement**

1. Should the parties have agreed to submit their dispute under the Rules, and unless they have expressly agreed to submit their dispute to the Rules in effect on the date of their Arbitration Agreement, they shall be deemed to have submitted their dispute to the Rules in effect on the date of commencement of the arbitration proceedings according to Article 4 para. 6.
2. An Arbitration Agreement shall be deemed to exist where its existence is asserted by one party and not denied by the other during the exchange of the Request for Arbitration and the Answer to the Request.
3. Should the Respondent not file an Answer as provided by Article 5, or should a party raise one or more pleas disputing the existence, validity or scope of the Arbitration Agreement, the Chairman of the Arbitration Committee may decide, without prejudice to the admissibility or merits of the objection(s), that the arbitration shall proceed if it is *prima facie* satisfied that an Arbitration Agreement under the Rules may exist.
4. Without prejudice of Article 6 para. 2, the arbitration may not proceed whenever there is no apparent Arbitration Agreement between the parties.
5. Provided an Arbitration Agreement is deemed to exist should a party refuse or fail to participate to the proceedings or at any stage thereof, the arbitration shall proceed notwithstanding such refusal or failure.

## **SECTION 3. THE ARBITRAL TRIBUNAL**

### **Article 7. Appointment of Arbitrators**

1. All Arbitrators shall be chosen from the respective arbitration sub-panels of the Arbitration Panel.
2. A party or anyone acting on its behalf shall not have any *ex parte* communication with any candidate for appointment as Arbitrator except to discuss the candidate's qualifications, availability or independence in relation to the parties.
3. Where the parties have not agreed on the number of Arbitrators, the Arbitration Committee shall decide whether a sole or three Arbitrator(s) shall be appointed. In case the Arbitration Committee decides that a sole Arbitrator should be appointed, such appointment shall occur according to the default appointment procedure as laid down in Article 8. In the event the Arbitration Committee decides for three Arbitrators, the Claimant shall nominate an Arbitrator within a period of [7] days as from the receipt of the notification of the decision of the respective Vice-Chairman of the Arbitration Committee, and the Respondent shall nominate an Arbitrator within a period of [7] days as from the receipt of the notification of the nomination made by the Claimant. Should one or both parties fail to nominate their Arbitrator, or fail to do so within the time limit, the respective Vice-Chairman of the Arbitration Committee shall appoint the Arbitrator(s). The third and presiding Arbitrator shall be nominated in accordance with Article 7 para. 5.
4. Where the parties have agreed that the dispute shall be settled by a sole Arbitrator, they shall nominate the sole Arbitrator within [15] days. The sole Arbitrator shall be deemed to be the Presiding Arbitrator. Should the parties fail to nominate the sole Arbitrator, or fail to do so within the time limit, the default appointment procedure as laid down in Article 8 shall be applied.
5. Where the parties have agreed that the dispute shall be settled by three Arbitrators, each party shall nominate an Arbitrator in the Request and the Answer within [7] days. Should the parties fail to nominate an Arbitrator, or fail to do so within the time limit, the appointment shall be made, in lieu of that party, by the respective Vice-Chairman of the Arbitration Committee. The third Arbitrator, who will act as chairman of the Arbitral Tribunal (Presiding Arbitrator), shall be chosen by both Arbitrators chosen by the parties or by/with the Arbitrator(s) appointed by the Chairman of the Arbitration Committee.

## **Article 8. Default Appointment of Sole Arbitrator**

Where the default procedure applies, the appointment shall take place in accordance with the following provisions, unless the Chairman of the Arbitration Committee deems the procedure inappropriate for the case.

- (i) The Registrar shall send to each party an identical list of candidates chosen from the respective sub-panels of the Arbitration Panel. The list shall comprise the names of at least three candidates in alphabetical order. The list shall include or be accompanied by a brief statement of each candidate's qualifications.
- (ii) Each party shall have the right to delete the name of any candidate or candidates to whose appointment it objects and shall number any remaining candidates in order of preference.
- (iii) Each party shall return the marked list to the Registrar within [7] days after the date on which the list is received by it. Any party failing to return a marked list within that period of time shall be deemed to have assented to all candidates appearing on the list.
- (iv) Thereafter, the Registrar shall, taking into account the preferences and objections expressed by the parties, invite a person from the list to be the sole or presiding Arbitrator.
- (v) Should the returned lists not enable to determine a person acceptable to both parties as Arbitrator, or should a person not be able or not wish to accept the invitation to be the sole or presiding Arbitrator, or should there appear to be other reasons precluding that person from being the sole or presiding Arbitrator, and should no person remain on the lists to be accepted as Arbitrator by both parties, the respective Vice-Chairman of the Arbitration Committee shall be authorized to appoint the sole or presiding Arbitrator.

## **Article 9. Multiple-party Arbitration**

1. When several contracts containing a BIR arbitration clause give rise to disputes that are closely related or indivisible, the Chairman of the Arbitration Committee is empowered to order the joinder of the arbitration proceedings. Alternatively, the Chairman of the Arbitration Committee may decide to entrust all closely related or indivisible matters to separate Arbitral Tribunals composed identically. In the latter case, the parties will not be enabled to choose the members of the Arbitral Tribunal.

2. This decision shall be taken either at the request of the Arbitral Tribunal, or, prior to any other issue, at the request of the parties or of the most diligent party, or at the Chairman of the Arbitration Committee's own initiative.

3. A joinder may not be ordered whenever it concerns disputes in which an interim or conservatory Award or an Award on admissibility or on the merits of the claim has already been rendered.

4. Where there are multiple parties, whether as Claimant or as Respondent, and where the dispute is to be referred to three Arbitrators, both the multiple Claimants, and the multiple Respondents shall, jointly, proceed with the required nominations.

5. In the absence of such a joint nomination and where all parties are unable to agree to a method for the formation of the Arbitral Tribunal, the Chairman of the Arbitration Committee may appoint each member of the Arbitral Tribunal and shall designate one of them to act as chairman.

#### **Article 10. Qualification of Arbitrators**

1. No Arbitrator shall serve in a matter where he has a conflict of interest and in particular where he has direct or indirect personal or financial interest in. However, parties may waive, in writing, any objections which may exist on such a ground.

2. Prior to its appointment or confirmation, an Arbitrator shall sign a statement of independence and disclose in writing to the Registrar any facts or circumstances which might be of such a nature as for the parties to question its independence. The Registrar shall provide such information to the parties in writing and determine a time limit for them to provide any comments.

3. An Arbitrator shall immediately disclose in writing to the Registrar, any facts or circumstances of a similar nature which may arise during the arbitration proceedings and which may have an impact on its independence. The Registrar shall subsequently inform the parties accordingly and the Arbitrator shall possibly be replaced as provided by Article 13.

4. When confirming or appointing Arbitrators, the respective Vice-Chairman of the Arbitration Committee shall consider the Arbitrator's nationality, residence and other relationships with the countries of which the parties or the other Arbitrators are nationals and the Arbitrator's availability and ability to conduct the arbitration in accordance with the Rules.

5. However, in suitable circumstances and provided that neither of the parties objects within the time limit determined by the respective Vice-Chairman of the Arbitration Committee, an Arbitrator may be chosen from a country of which any of the parties is a national.

6. In the event of a disagreement between or among the parties, concerning the appointment of an Arbitrator, the respective Vice-Chairman of the Arbitration Committee will adjudicate and its decision shall be final.

## **Article 11. Appointment of Arbitrators and Establishment of the Arbitral Tribunal**

1. The Chairman of the Arbitration Committee confirms and the appointment of the Arbitrator(s). The decisions as to the appointment of an Arbitrator shall be final. These decisions do not have to state the reasons for the decision.
2. Each appointed Arbitrator shall accept its appointment in writing and shall communicate such acceptance to the Registrar.
3. Without prejudice of Article 10, by accepting to serve, every Arbitrator declares to be available and to carry out its responsibilities until the end of the Arbitration proceedings in accordance with the Rules.
4. The Registrar shall notify the parties of the establishment of the Arbitral Tribunal.

## **Article 12. Challenge of Arbitrators**

1. A challenge of an Arbitrator, whether for an alleged lack of independence or otherwise, shall be made by the submission to the Registrar of a written statement underlining the facts and circumstances on which the challenge is based.
2. A party may challenge an Arbitrator only for reasons of which it becomes aware after the appointment has been made.
3. For a challenge to be admissible, it must be sent within [10] days from the date when the party challenging the Arbitrator was informed of the facts and circumstances on which the challenge is based.
4. Whenever an admissible challenge has been submitted, the Registrar notifies the other party within [7] days.
5. When an Arbitrator has been challenged by a party, the other party and the concerned Arbitrator shall have the right to respond to the challenge and shall, for that matter, send within [10] days after receipt of the notice a copy of its response to the Registrar, which shall notify the party initiating the challenge and the other Arbitrators.
6. The Chairman of the Arbitration Committee shall decide on the admissibility of the challenge and the Arbitral Tribunal has the discretionary power to suspend or to continue the arbitral proceedings during the pendency of the challenge.
7. The other party may concur with the challenge or the Arbitrator may voluntarily withdraw. In either case, the Arbitrator shall be replaced in accordance with the procedure of Article 13, without any implication that the grounds for the challenge are valid.

8. Should the other party dissent with the challenge and should the challenged Arbitrator not withdraw, the decision on the challenge shall be made by the Chairman of the Arbitration Committee . Such a decision shall be final and the Chariman shall not be required to state reasons for its decision.

### **Article 13. Replacement of Arbitrators**

1. An Arbitrator shall be replaced upon its death, upon the acceptance by the Chairman of the Arbitration Committee of the Arbitrator's resignation or challenge, or at the request of all the parties.

2. An Arbitrator shall be replaced on the Chairman of the Arbitration Committee's own initiative when it decides that it is prevented *de jure* or *de facto* from fulfilling its functions, or that it is not fulfilling its functions in accordance with the Rules or within the prescribed time limits.

3. When an Arbitrator is to be replaced:

- (i) pending the replacement, the arbitral proceedings shall be suspended, unless otherwise agreed by the parties;
- (ii) the Chairman of the Arbitration Committee has discretion to decide whether or not to follow the original appointment process;
- (iii) once reconstituted, and after having invited the parties to comment, the Arbitral Tribunal shall determine if and to what extent prior proceedings shall be repeated.

4. Subsequent to the closing of the proceedings, instead of replacing an Arbitrator who has died or been removed:

- (i) the Chairman of the Arbitration Committee may decide, should he deem it appropriate, that the remaining Arbitrators shall continue the arbitration;
- (ii) in taking such decision, the Chairman of the Arbitration Committee shall take into account the views of the remaining Arbitrators and of the parties and any other matters it considers appropriate given the circumstances.

5. The decision as to the replacement of an Arbitrator shall be final. This decision does not have to state the reasons for the decision.

### **Article 14. Pleas as to the Jurisdiction of the Arbitral Tribunal**

1. An arbitration clause contained in a contract shall be treated as independent and separate from all other clauses of the contract, and an arbitration agreement attached to a contract shall also be treated as independent and separate from all other clauses of the contract. Unless agreed otherwise, the validity of an arbitration clause or an arbitration agreement shall not be affected by any modification, rescission, termination, transfer, expiry, invalidity, ineffectiveness, revocation or non-existence of the contract.

2. Unless agreed otherwise, the Arbitral Tribunal shall maintain jurisdiction even in the eventuality of any claim that the contract is null and void or allegation that it is non-existent, provided that the Arbitral Tribunal upholds the validity of the Arbitration Agreement.

3. The Arbitral Tribunal shall have the power to determine the existence or validity of any contract in which the Arbitration Agreement encompasses or to which it relates.

4. The Arbitral Tribunal shall have jurisdiction to determine the respective rights of the parties and to arbitrate their claims (and pleas) even though the contract itself may be non-existent or null and void.

5. The Arbitral Tribunal shall have the power to hear and determine objections to its own jurisdiction, including any objections with respect to form, existence, validity or scope of the Arbitration Agreement.

6. The Arbitral Tribunal may rule on a plea regarding its own jurisdiction as a preliminary question or, in its sole discretion, in the final Award.

#### **SECTION 4. THE ARBITRAL PROCEEDINGS**

##### **Article 15. Presentation of the Procedure and Conduct of Arbitration**

1. The proceedings before the Arbitral Tribunal shall be governed by the Rules and, whenever the Rules are silent, by any rules which the parties or, failing them, the Arbitral Tribunal may settle on, whether or not reference is thereby made to the rules of procedure of a national law to be applied to the arbitration.

2. After consultation, if necessary, with the designated Arbitrator(s), the Registrar shall explain the procedure and other general principles for the proper conduct of each arbitration.

3. Without prejudice of the Rules, the Arbitral Tribunal may conduct the arbitration in any manner it deems appropriate.

4. In all cases, the Arbitral Tribunal shall act fairly and impartially and ensure that each party has a reasonable opportunity to present its case and is treated equally.

5. The Arbitral Tribunal shall, before addressing any matter related to the merits of the dispute, determine if the proceedings shall be conducted:

- (i) solely on the basis of written documents;
- (ii) on the basis of oral hearings in addition to the submission of written documents.

The Arbitral Tribunal notifies the Registrar and the parties of its decision. The Arbitral Tribunal may in the course of the proceedings review its decision.

## **Article 16. Transmission of the File to the Arbitral Tribunal**

1. Provided that the Registration Fee has been paid, the Registrar shall transmit the file to the Arbitral Tribunal.
2. During the proceedings, all communications, documents, exhibits, memoranda, arguments, briefs and all other material shall constitute the file which shall at all times be under the control of the Registrar.

## **Article 17. Terms of Reference and Procedural Timetable**

1. Before examining the file, the Arbitral Tribunal shall draw up the Terms of Reference defining its task and containing the following information:
  - (i) the Request for Arbitration;
  - (ii) the Answer to the Request for Arbitration and provided it does not appear already in the abovementioned documents ;
  - (iii) the name and addresses of each party's counsel(s);
  - (iv) summary of the parties' (counter)claims;
  - (v) the full names, first names, descriptions and addresses of the Arbitrator(s);
  - (vi) the venue of arbitration;
  - (vii) the rules of law applicable to the proceedings and to the merits of the case;
  - (viii) any other particulars that the Arbitral Tribunal may consider useful, and if such is the case, reference to the power conferred upon the Arbitral Tribunal to act as conciliator (*amiable compositeur*) or to decide *ex aequo et bono*.
2. The Terms of Reference must be signed by the parties and the Arbitral Tribunal. The Arbitral Tribunal shall send these Terms of Reference to the Registrar within one month of the transmission of the file.
3. This time limit may be extended at the request of the Arbitral Tribunal or on its own motion by the Registrar.
4. Once the Terms of Reference have been signed, no party shall make new claims or counterclaims which fall outside the scope 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 stage of the arbitration and other relevant circumstances. New claims or counterclaims must be submitted in writing. The Arbitral Tribunal may refuse to examine such new claims if it considers that they might delay the examination of the original claim(s), or if they are beyond the scope of the Terms of Reference.
5. When drawing up the Terms of Reference, or as soon as possible thereafter, the Arbitral Tribunal, after having consulted with the parties, shall establish in a separate document a provisional Timetable that it intends to follow for the conduct of the arbitration and shall communicate it to the Registrar which shall send a copy to the parties. Any subsequent modifications of the Procedural Timetable shall be communicated to the Registrar and the parties.

### **Article 18. Place of Arbitration**

1. Unless the proceedings are written and unless otherwise agreed by the parties, the venue of arbitration shall be decided by the Arbitral Tribunal and in absence of consensus by the Chairman of the Arbitration Committee, taking into consideration the circumstances of the arbitration and observations of the parties.
2. The Arbitral Tribunal may deliberate at any place that it considers appropriate.
3. The Award shall be deemed to have been made at the seat of the Association.

### **Article 19. Language of Arbitration**

1. Unless the language of the arbitration has been provided in the Arbitration Agreement, the language shall be determined by mutual agreement between the parties and the Arbitral Tribunal.
2. In the absence of an agreement by the parties, the Arbitral Tribunal shall determine the language of the arbitration, taking into consideration all relevant circumstances, including the language of the contract.
3. In the event that the Arbitration is carried out in a language which is not English, the Award shall be translated into English. The cost of translation shall be born equally by the parties.
4. The determined language shall apply to the statement of claim, the statement of defence, and any further written statements and, if any, to the hearings. With respect to the other documents filed by the parties like the evidences or case law, the Arbitral Tribunal shall have full authority to decide which document has to be accompanied by a translation in whole or in part in the language of the Arbitration. Unless decided otherwise by the Arbitral Tribunal, each party bears its own translation costs.
5. Any witness shall have the right to testify in the language of its choice. If it requires an interpreter, the expenses shall be borne by the party calling such witness, or in some other manner determined by the Arbitral Tribunal.

### **Article 20. Rules Applicable to the Proceedings**

1. The proceedings before the Arbitral Tribunal shall be governed by the Rules and, where the Rules are silent, by any rules which the parties or, failing them, the Arbitral Tribunal may settle on.
2. Whenever a difference arises among the Arbitrators concerning the interpretation of the Rules or concerning any matter not specifically covered therein, the question shall be referred to the Arbitration Committee and its decision shall be final.

## **Article 21. Rules of Law Applicable to the Merits of the Dispute**

Unless the parties have formally agreed upon the rules of law to be applied by the Arbitral Tribunal to the merits of the dispute, the Arbitral Tribunal shall decide which law is applicable.

## **Article 22. Representation by a Counsel**

1. Any party may be represented and assisted by one or several counsels of its choice. The counsel shall be member of a bar or its equivalent.
2. Each party shall ensure that its representative(s) has (have) sufficient time available to enable the arbitration to be conducted expeditiously.
3. A party intending to be represented shall notify the Registrar and shall communicate the name, address and contact information of its representative(s) to the Registrar, the Arbitral Tribunal and the other party.

## **Article 23. Statement of Claim and Statement of Defence**

1. Each party shall, within 30 days after the establishment of the Arbitral Tribunal, unless the Arbitral Tribunal decides to extend or shorten such deadline, communicate its written submissions to the Arbitral Tribunal, to the other parties and to the Registrar. The proceedings shall proceed forward should a party fail to address its submissions in writing to the Arbitral Tribunal. Written submissions filed late shall be disregarded by the Arbitral Tribunal unless all parties agree that they should be deemed as filed in due time.
2. The written submissions shall contain the facts and legal arguments supporting the (counter)claim(s) and/or defence, including when applicable a statement of the relief sought. The written submissions shall be accompanied by the documentary evidence upon which the party relies.
3. Unless requested by the Arbitral Tribunal, the parties shall not have the opportunity to file additional written submissions. The pleas that have not been addressed (anticipated) in the written submissions shall be addressed during the hearing. Unless requested by the Arbitral Tribunal (see Article 29 hereunder), no additional documentary evidence may be filed after filing of the written submissions.

## **Article 24. Communications and Time Periods**

1. All written communications submitted by any party, as well as all documents annexed thereto, shall be supplied in a number of copies sufficient to provide one copy for each party, plus one for each Arbitrator, and one for the Registrar. A copy of any communication from the Arbitral Tribunal to the parties shall be sent to the Registrar.

2. Any notice or other communication that may or is required to be given under the Rules shall be in writing and shall be delivered by registered postal or courier service, or transmitted by telefax, e-mail or other means of telecommunication which provide a record of the sending thereof.

3. All notifications or communications from the Registrar and the Arbitral Tribunal shall be made to the last communicated address of the party or its counsel(s).

4. A notification or communication shall be deemed to have been made on the day it was received by the party itself or by its counsel(s). In case of doubt, such notification is deemed to have been received [2] days after sending the information.

5. Periods of time specified in or fixed shall start to run on the day following the date a notification or communication is deemed to have been made in accordance with the preceding paragraph.

6. When the day next following such date is an official holiday or a non-business day in the country where the notification or communication is deemed to have been made, the period of time shall commence on the first following business day. Official holidays and non-business days are included in the calculation of the time limit.

7. There shall be no direct communication between the parties or between any party and an Arbitrator other than at hearings, being understood that nothing in this paragraph shall prohibit *ex parte* communications which concern matters of a purely organisational nature, such as the physical facilities, place, date or time of the hearings.

8. Without prejudice of Article 30 hereinafter, all parties in the Arbitral Tribunal shall strictly abide with the *inter partes* character of the proceedings.

#### **Article 25. Examination of the Case**

1. The Arbitral Tribunal may examine the case solely on the basis of the documents submitted by the parties, unless the parties or one of them requests a hearing.

2. The Arbitral Tribunal shall proceed within as short a time as possible to examine the case by all appropriate means. It may, *inter alia*, obtain evidence, hear the testimony from witnesses, conduct experiments, and appoint one or more experts.

#### **Article 26. Hearings**

1. Either at the request of a party or at its own initiative, the Arbitral Tribunal may summon the parties to appear before it.

2. Each party has the right to debate during the hearings. At the end of the debate, the Presiding Arbitrator shall solicit the parties' final views.

3. In the event of a hearing, the Arbitral Tribunal shall give the parties adequate advance notice of the date, time and place thereof. In exceptional cases duly motivated in the Arbitral Award, or when there is a consensus among all parties and the Arbitral Tribunal, the Arbitral Tribunal may organize a hearing in the context of a (video) conference call where parties and/or the Arbitral Tribunal are not, physically, in the same room.

4. The hearings shall be private only. Parties, their counsels, the Registrar, witnesses including experts witnesses nominated by a party and any other persons required by the Arbitral Tribunal may be present.

5. Should any of the parties duly summoned fail to appear before the Arbitral Tribunal without valid excuse, it shall have the power to proceed with the hearing.

6. During the hearings, no record and minutes shall be taken unless decided by the Arbitral Tribunal.

#### **Article 27. Substantiation**

1. Each party has the responsibility of proving the facts relied on to support its claim or defence.

2. Without prejudice of Article 30, all witness testimony shall be taken in the presence of all Arbitrators and of all the parties except where any of the parties is in default or has waived his right to be present.

#### **Article 28. Witnesses**

1. Each party may call witnesses, however, witnesses, including expert witnesses, who are presented by the parties to testify to the Arbitral Tribunal on any issue of fact may not be a party involved in the proceedings or in any way related to a party.

2. Arbitrators may require witnesses to testify under oath administered by any duly qualified person.

3. Unless otherwise directed by the Arbitral Tribunal, statements by witnesses, including expert witnesses, may be presented in writing and shall be signed by them.

4. If a party calls a witness, it shall be responsible for the practical arrangements, cost and availability of the witness.

5. Arbitrators may receive and consider the evidence of witnesses by affidavit.

6. Without prejudice of Article 30, any witness giving an oral testimony may be questioned, under the control of the Arbitral Tribunal, by each of the parties. The Arbitral Tribunal may ask questions at any stage of the examination of the witnesses.

## **Article 29. Evidence and Inspection of Materials**

1. The Arbitral Tribunal shall solely determine the admissibility, relevance, materiality and weight of the evidence.
2. At any time during the proceedings, the Arbitral Tribunal may, at the request of a party or at its own initiative, summon a party to disclose evidence, or to provide additional documents, evidence, as it deems necessary or appropriate and may order a party to provide the Arbitral Tribunal or an expert appointed by it or to the other party with any property in its possession or control for inspection or testing.
3. The Arbitral Tribunal may specify a time period for the parties to disclose evidence and the parties shall disclose evidence within the specified time period. The Arbitral Tribunal may refuse to admit any evidence disclosed beyond the period. However, if a party has difficulties to disclose evidence within the specified time period, it may request an extension before the expiration of the time limit. The Arbitral Tribunal shall decide whether or not to extend the time period.
4. The Arbitral Tribunal may require any party to submit a number of representative samples of materials or other property involved. Failing to such requirement, may cause the Arbitral Tribunal to be obtained, at the exclusive costs of such parties, samples in any manner it deems appropriate.
5. The Arbitral Tribunal may order tests, samplings or examinations of materials be conducted by experts or other persons selected by them; and testimony in regard to such tests may be offered at the hearings.
6. If the evidence is perishable or if the evidence may be hard to obtain in the future, the parties may request that the evidence be preserved.

## **Article 30. Confidentiality**

1. By accepting their appointment, the Arbitrator(s) pledge(s) to keep strictly confidential all statements and documents issued by the parties involved.
2. During the proceedings, the Arbitral Tribunal shall take measures for protecting trade secrets and confidential information. Such measures may depart from the strict abidance of the *inter partes* character of the proceedings.
3. The existence and content of the arbitral proceedings and any rulings or Award shall be kept confidential by the parties and members of the Arbitral Tribunal except:
  - (i) to the extent that disclosure may be required of a party to fulfil a legal obligation, protect or pursue legal rights, or enforce or challenge an Award in *bona fide* legal proceedings before a state court or other judicial authority;
  - (ii) with the written consent of all parties, including the Arbitral Tribunal;

- (iii) where needed for the preparation or presentation of a claim or defence in this arbitration;
- (iv) where such information is already in the public domain other than as a result of a breach of this clause;

4. A party may invoke the strict confidentiality of any information it wishes or is required to disclose during the arbitration proceedings. That party shall request to have the information classified as strictly confidential by notice to the Arbitral Tribunal, with a copy to the other party. Without disclosing the substance of the information, the party shall give in the notice the reasons for which it considers the information strictly confidential.

5. The Arbitral Tribunal shall determine whether the information is to be classified as strictly confidential and of such a nature that the absence of special measures of protection in the proceedings would be likely to cause serious harm to the party invoking its confidentiality. If the Arbitral Tribunal so determines, it shall decide under which conditions and to whom the confidential information may in part or in whole be disclosed and shall require from the execution of a confidentiality statement.

6. In exceptional circumstances, the Arbitral Tribunal may, at the request of a party or at its own initiative, designate a confidentiality advisor who will determine whether the information is to be so classified, and, if so, decide under which conditions and to whom it may in part or in whole be disclosed. Any such confidentiality advisor shall be required to sign a confidentiality statement.

7. The Arbitral Tribunal may appoint the confidentiality advisor as an expert in order to report, on the basis of the confidential information, on specific issues designated by the Arbitral Tribunal without disclosing the confidential information either to the party from whom the confidential information does not originate or to the Arbitral Tribunal.

### **Article 31. Withdrawal and Dismissal**

1. A party may file a request to the Arbitral Tribunal to withdraw its claim or counterclaim. In the event that a party files such a request, the Arbitral Tribunal shall proceed with its examination and render an arbitral Award thereon.

2. Where a case or a (counter) claim is respectively to be dismissed or withdrawn prior to the formation of the Arbitral Tribunal, the decision shall be made by the Chairman of the Arbitration Committee .

### **Article 32. Premature Termination of the Proceedings**

1. Prior to issuing, the Award, and provided the arbitral proceedings become unnecessary or impossible for any reasons, 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 terminating the arbitration unless there are

remaining matters, deemed appropriate by the Arbitral Tribunal that may need to be decided so, or unless a party raises reasonable grounds for objection within a period of time to be determined by the Arbitral Tribunal.

2 The Arbitral Tribunal shall communicate copies of the order for termination of the arbitral proceedings or of the Award on agreed terms, signed by the Arbitrator(s) to the Registrar. The Registrar shall formally communicate an original of the consent Award or the order for termination to each party and the Arbitrator(s).

### **Article 33. Adjournments and Closing of the Proceedings**

1. The Arbitral Tribunal may postpone or adjourn any steps of the proceedings or any hearings whenever deemed necessary, at the request of any party or at the Arbitral Tribunal's initiative.

2. The Arbitral Tribunal shall close the proceedings when satisfied that the parties have had a reasonable opportunity to present their cases. Without prejudice of Article 23 para. 3, following the closure of the proceedings, no further submission or argument may be made, or evidence disclosed, unless requested or authorised by the Arbitral Tribunal.

3. Should it deem it necessary, the Arbitral Tribunal may decide, in case of, exceptional circumstances, at its own initiative or at the request of a party, to re-open the proceedings it declared to be closed at any time before the Award is made.

### **Article 34. Conservatory and Interim Measures**

1. Unless the parties have otherwise agreed, each party may ask the Arbitral Tribunal, as soon as the file has been transmitted to it, to order any interim or conservatory measures it deems appropriate, with respect to the dispute, including the provision of guarantees or security for costs.

2. Such measure shall take the form of an order, setting out the reasons for the decision, or, if the Arbitral Tribunal considers it appropriate, an Award.

3. The Arbitral Tribunal may subject the granting of such measure to a security guarantee to be provided by the requesting party.

### **Article 35. Waiver of Right to Object**

A party proceeding with the arbitration without promptly raising an objection in writing to the Registrar regarding a failure to comply with any provisions of the Rules, or of any other rules applicable to the proceedings, any directions given by the Arbitral Tribunal, or any requirements under the Arbitration Agreement relating to the constitution of the Arbitral Tribunal, or to the conduct of the proceedings, shall be deemed to have waived

its right to object, unless such party can show that, under the circumstances, its failure to object was justified.

### **Article 36. Default**

1. If, within the period of time determined by the Rules or the Arbitral Tribunal, without showing sufficient grounds:

- (i) The claimant has failed to communicate its written submissions, the Arbitral Tribunal shall issue an order for the termination of the arbitral proceedings, unless there are remaining matters that may need to be decided and the Arbitral Tribunal deems it appropriate to do so;
- (ii) The respondent has failed to communicate its written submissions, the Arbitral Tribunal shall order that the proceedings continue, without treating such failure in itself as an admission of the claimant's allegations; the provisions of this subparagraph also apply to a claimant's failure to submit a defence to a counterclaim or to a claim for the purpose of a set-off.

2. If a party, duly notified under the Rules, fails to appear at a hearing, without showing sufficient grounds for such failure, the Arbitral Tribunal shall proceed with the arbitration.

3. If a party, duly summoned by the Arbitral Tribunal to disclose documents, exhibits or other evidence, fails to do so within the established period of time, without stating adequate grounds for such failure, the Arbitral Tribunal shall nevertheless render the Award.

## **SECTION 5. COMBINATION OF CONCILIATION WITH ARBITRATION**

### **Article 37. Settlement Reached without Assistance of the Arbitral Tribunal**

1. Where the parties have reached a settlement agreement by themselves through negotiation or conciliation without involving an Arbitral Tribunal, either party may, based on an Arbitration Agreement request the Association to constitute an Arbitral Tribunal to render an arbitral Award in accordance with the terms of the settlement agreement. The parties are not bound to disclose the terms of the settlement to the Arbitral Tribunal. In this case the Award shall only acknowledge the execution of a settlement among parties.

2. Whenever an Arbitral Tribunal is to be constituted to render an arbitral Award in accordance with the terms of the settlement agreement, the default appointment procedure of a sole Arbitrator shall be applied in accordance with the provisions of Article 8, who shall examine the case in the procedure it considers appropriate and render an Award in due course. The specific procedure and the time limit for rendering the Award shall not be subject to other provisions of the Rules.

### **Article 38. Settlement with Involvement of the Arbitral Tribunal**

1. Provided the parties have expressly agreed, the Arbitral Tribunal shall assume the powers of a conciliator (*amiable compositeur*) during the course of the arbitration proceedings. The arbitration proceedings will in the meantime be suspended. Such powers will be carried out in a strict confidential context in compliance with Article 40 hereinafter.
2. The Arbitral Tribunal may conciliate the case in the manner it considers appropriate. The Arbitral Tribunal may i.a. initiate a conciliation process which will be further discussed among parties without new involvement of the Arbitral Tribunal.
3. Provided the parties have reached an agreement on the settlement of the dispute before the Award is rendered, the Arbitral Tribunal shall issue an order for the termination of the arbitral proceedings, acknowledge such settlement, and record it as an arbitral Award.
4. When an arbitral Award on agreed terms is rendered, the specific procedure and the time limit for rendering the Award shall not be subject to other provisions of the Rules.

### **Article 39. Failed Attempt of Conciliation**

1. The Arbitral Tribunal shall terminate the conciliation and pursue the arbitration proceedings should one of the parties request the termination of the conciliation or should the Arbitral Tribunal believe that further efforts to conciliate will be vain.
2. Where conciliation fails, the Arbitral Tribunal shall proceed with the arbitration and render an arbitral Award in accordance with the Rules.

### **Article 40. General Provisions Applicable to Conciliation and to Negotiation**

1. Whenever parties attempt to reach a settlement agreement through negotiation or conciliation, any view, opinion, statement or document circulating either by a party or by the Arbitral Tribunal during such process and any proposition or proposal expressing acceptance or opposition by either party or by the Arbitral Tribunal in the process of negotiation or conciliation shall remain confidential and may not be invoked in any way as grounds for any claim, defense or counterclaim, or be used as evidence or confession in the subsequent arbitration proceedings or any other proceedings.
2. All parties, Arbitrators, third parties or any other person involved in the negotiation or conciliation shall keep, at any time during the attempt settlement or thereafter, all information confidential.

## **SECTION 6. THE AWARD**

### **Article 41. Time Limit for Delivery of the Award**

1. The arbitration proceedings should, wherever reasonably possible, be conducted and closed within no more than three months of the Terms of Reference mentioned in Article 17. The final Award should, wherever reasonably possible, be made within one month of the closure of the proceedings.
2. The Chairman of the Arbitration Committee may extend any of these time limits further to a reasoned request from the Arbitral Tribunal or on its own initiative if it decides it is necessary to do so.
3. If the proceedings are closed within the allocated period of time, the Arbitral Tribunal shall send to the Registrar a status report on the arbitration. The Arbitral Tribunal shall send a further status report to the Registrar, at the end of each ensuing period of [one] month during which the proceedings have not been declared closed.
4. Without prejudice of an extension of time limit, if the final Award is not rendered within one month after the closing of the proceedings, the Arbitral Tribunal shall send to the Registrar a written explanation for the delay. It shall send a further explanation at the end of each ensuing period of [one] month until the final Award is rendered.

### **Article 42. Form and Notification of the Award**

1. The Arbitral Tribunal may render preliminary, interim, interlocutory, partial or final Awards. The Arbitral Tribunal may render separate Awards on different issues at different times.
2. The Award shall be in writing and shall state the date on which it was rendered, as well as the place of arbitration.
3. The Award shall state the reasons on which it is based, unless the parties have agreed that no reasons should be stated, provided the law applicable to the arbitration does not require the statement of such reasons.
4. An Award shall be signed by the Arbitrator(s). The Award is binding provided it is at least signed by the Presiding Arbitrator. Where there is more than one Arbitrator and should any of them fail to sign, the Award shall state the reason for the absence of the signature.
5. The Arbitral Tribunal may consult the Registrar with regard to matters of form, particularly to ensure the enforceability of the Award.

6. Once the Award is rendered, the parties, unless it is within the scope of Articles 47 and seq. of the Rules, shall refrain from (i) taking any contact with any Arbitrator to discuss the Award and (ii) from stalking any other party.

#### **Article 43. Decision**

1. Where the Arbitral Tribunal is composed of more than one Arbitrator, any Award, order or other decision shall be made by a majority.

2. In the case of questions of procedure or when the Arbitral Tribunal so authorizes, the Presiding Arbitrator may decide as a sole Arbitrator.

#### **Article 44. Scope of the Award**

The Award shall determine all the controversies or claims submitted to arbitration. The Award may comprise one or more of the following:

- (i) require specific performance of a contract as to matters of quality, acceptance, payment and delivery of products;
- (ii) require acceptance or replacement of materials or other property involved in the arbitration;
- (iii) determine allowances for materials which failed to comply with specifications;
- (iv) Award damages;
- (v) grant any other different or similar relief or remedy which the Arbitral Tribunal may deem fair and equitable.

#### **Article 45. Deposit and enforceability of the Award**

1. The Award shall be communicated by the Arbitral Tribunal to the Registrar in a number of originals sufficient to provide one for each party, the Arbitrator or Arbitrators. The Registrar shall formally communicate an original of the Award to each party and this shall constitute, upon acceptance, the legal delivery of the Award to the parties.

2. By virtue of the notification made in accordance with the present Article, the parties waive any other form of notification on the part of the Arbitral Tribunal.

5. At the request of a party, the Registrar shall provide it, at cost, with a copy of the certified Award. A copy so certified shall be deemed to comply with the requirements of Article IV(1)(a) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, June 10, 1958.

#### **Article 46. Effect of the Award**

1. All Awards shall be binding on the parties as from the date they are notified by the Registrar according to Article 45.
2. By submitting the dispute to arbitration under the Rules, the parties undertake to carry out any Award promptly and shall be deemed to have waived their right to any form of recourse insofar as such waiver can validly be made under the applicable law.
3. Should a party not observe the Award rendered by the Arbitral Tribunal, the other party is entitled to file an action for enforcement of the Award through exequatur before the national court where the enforcing party is willing to enforce the Award.
4. Without prejudice of Article 31, the publication on the Association's website of an unobserved award by one party may be granted by the Arbitration Committee upon request of the other party provided the latter has vainly taken all reasonable steps to enforce the award. Such publication shall be made possible not earlier than two months after the award has been notified by the Registrar in accordance with Article 45. The Association reserves the right to establish a list with all parties not observing enforceable awards and make such list publicly available. Provided there are prima facie reasonable grounds for not carrying out the Award, the Association and the Arbitration Committee may waive such publications.
5. Should the enforceable Award not be observed by a party member of the Association, the expulsion of said member may be considered in accordance with the provisions of the Articles of Association of the Association.

#### **Article 47. Interpretation of the Award**

1. Within 30 days after the notification of the Award, a party, with notice to the other parties, may request that the Arbitral Tribunal give an interpretation of the Award.
2. The decision to interpret the Award shall take the form of an addendum and shall constitute part of the Award.
3. The interpretation shall be given in writing within [30] days after the receipt of the request.

#### **Article 48. Correction of the Award**

1. Within 30 days after the notification of the Award, a party, with notice to the other parties, may request the Arbitral Tribunal to correct in the Award any error in computation, any clerical or typographical error, any missing page or any error or omission of a similar nature.

2. If the Arbitral Tribunal considers the request to be justified, it shall make the correction within [30] days of receipt of the request.
3. After the application to the Arbitral Tribunal, it shall grant the other party a time limit, not exceeding 30 days, from the receipt of the application by that party, to submit any comments thereon.
4. The Arbitral Tribunal may within 30 days after the notification of the Award make such corrections on its own initiative.
5. Such corrections shall be in writing, in a separate memorandum, signed by the Arbitral Tribunal in accordance with Article 42, and shall become part of the Award.
6. The provisions of Article 45 shall apply to such correction.

#### **Article 49. Additional Award**

1. A party may, within 30 days after notification of the termination order or the Award, by notice to the Arbitral Tribunal, with a copy to the Registrar, request the Arbitral Tribunal to make an additional Award as to claims presented in the arbitral proceedings but not decided by the Arbitral Tribunal.
2. The Arbitral Tribunal shall give the parties an opportunity to be heard, if the Arbitral Tribunal considers such request admissible.
3. If the Arbitral Tribunal considers the request for additional Award not to be admissible, it shall render an Award rejecting such request within 15 days of receipt of the request.
3. If the Arbitral Tribunal considers the request for additional Award to be admissible, it shall, wherever reasonably possible, render the additional Award within 60 days of receipt of the request. The Arbitral Tribunal may extend, if necessary, the period of time within which it shall make the Award.
4. When such an additional Award is made, the provisions of Articles 42 and 45 shall apply.

## **SECTION 7. ARBITRATION COSTS**

### **Article 50. Nature and amount of arbitration costs**

1. The Arbitration Costs shall include the Registration Fees, Administration Fees and the Fees and Expenses of the Arbitral Tribunal (the Arbitrator(s)). They shall be fixed according to the Schedule of Fees applicable on the date on which the Request for Arbitration is received by the Registrar (see Annex 1).
2. The Schedule of Fees is set up by the Arbitration Committee, who may amend it from time to time. Any amendment of the Schedule of Fees is applicable one month after its upload on BIR's web site.
3. Other costs and expenses relating to the arbitration, such as the fees and expenses of any experts, translators appointed by the Arbitral Tribunal or the legal and other expenses incurred by the parties, are not included in the Arbitration Costs. The Arbitral Tribunal can decide about such costs or expenses.
4. The Registrar may fix the Arbitration Costs at a higher or lower figure than that which would result from the implementation of the Schedule of Fees, should this be deemed necessary due to the exceptional circumstances of the case.
5. The Registrar may adjust the amount of the Arbitration Costs at any time during the proceedings if the circumstances of the case or if new claims reveal that the scope of the dispute is greater than originally considered.

### **Article 51. Registration Fee**

1. The Request for Arbitration shall be subject to the payment to the Registrar of a non-refundable Registration Fee. The amount of the Registration Fee shall be fixed in the Schedule of Fees applicable on the date on which the Request for Arbitration is received by the Registrar.
2. Any counter-claim by a Respondent shall be subject to the payment to the Registrar of a non-refundable Registration Fee. The amount of the Registration Fee shall be fixed in the Schedule of Fees applicable on the date on which the Request for Arbitration is received by the Registrar.
3. No action shall be taken by the Association on a Request for Arbitration or a counter-claim until the Registration Fee has been paid.
4. If a Claimant or Respondent fails, within 15 days after a second reminder in writing from the Registrar, to pay the Registration Fee, it shall be deemed to have withdrawn its Request for Arbitration or counter-claim, as the case may be.

5. The Registration Fee paid by the Claimant or the Respondent will be considered as a partial payment of the final share of the Arbitration Costs payable by the Claimant or the Respondent, as the case may be.

#### **Article 52. Administration Fee**

1. A non-refundable administration fee shall be payable by the Claimant to the Registrar within 30 days after the Claimant has received notification from the Registrar of the amount to be paid. The amount of the Administration Fee shall be fixed in the Schedule of Fees applicable on the date on which the Request for Arbitration is received by the Registrar.

2. In the case of a counter-claim, a non-refundable administration fee shall also be payable by the Respondent to the Registrar within 30 days after the Respondent has received notification from the Registrar of the amount to be paid. The amount of the Administration Fee shall be fixed in the Schedule of Fees applicable on the date on which the Request for Arbitration is received by the Registrar.

3. Where a claim or counter-claim is increased, the amount of the administration fee may be increased in accordance with the Schedule of Fees applicable on the date on which the claim or counter claim increase has been admitted by the Arbitral Tribunal.

4. If a party fails, within 15 days after a second reminder in writing from the Registrar, to pay an Administration fee due, it shall be deemed to have withdrawn its claim or counter-claim, or its increase in claim or counter-claim, as the case may be.

5. The Tribunal shall, in a timely manner, inform the Registrar of the amount of the claim and any counterclaim, as well as any increase thereof.

#### **Article 53. Fees of the Arbitrator(s)**

The amount and currency of the fees of the appointed Arbitrators and the modalities and timing of their payment shall be fixed by the Arbitral Tribunal in compliance with the Schedule of Fees applicable on the date on which the Request for Arbitration is received by the Registrar.

#### **Article 54. Advances**

1. Upon receipt of notification from the Registrar of the establishment of the Arbitral Tribunal, the Claimant and the Respondent shall each pay equal amount as an advance for the costs of arbitration as reasonably assessed by the Arbitral Tribunal. The amount of the advance shall be determined by the Arbitral Tribunal.

2. In the course of the arbitration, the Arbitral Tribunal may require that the parties make supplementary advances.

3. In the event that the advances requested by the Arbitral Tribunal appears to be unreasonable, each party may lodge an appeal against such advances with the Chairman of the Arbitration Committee. The appeal, duly motivated, shall be filed with the Registrar at the latest within 15 days after notification of the disputed advances, the Arbitral Tribunal and the other parties being copied by the appealing party of the appeal petition. Such deadline is set up at the risk of forfeiting such right of appeal. The Arbitral Tribunal may submit written submissions within 7 days of notification of the copy of the appeal petition. The written submissions shall be notified to the Registrar and to the parties. The Arbitration Committee shall rule within 7 days of notification of said written submissions. The ruling, duly motivated, shall be final and binding upon all parties and the Arbitral Tribunal. In case of obvious misuse of such appeal procedure the Chairman of the Arbitration Committee may order an administrative fine to be paid within one month by the appealing party.

4. Advances are payable within 30 days of its notification.

5. Where the amount of the counter-claim greatly exceeds the amount of the claim or involves the examination of significantly different matters, where it otherwise appears appropriate in the circumstances or at the request of the parties or one of them, the Arbitral Tribunal in its discretion may establish two separate advances on account of claim and counter-claim. If separate advances are established, the totality of the advance on account of claim shall be paid by the Claimant and the totality of the advance on account of counter-claim shall be paid by the Respondent.

6. If a party fails, within 15 days after a second reminder in writing from the Arbitral Tribunal, to pay the required advance, it shall be deemed to have withdrawn the relevant claim or counter-claim and shall be deemed to have assented with no reservations to the claim or the counterclaim, as the case may be, filed by the parties who have duly paid their share of the requested advances. The present Article shall only apply provide the Arbitral Tribunal has duly copy the present section of the Rules in each notification related to the payment of advances.

7. After the Award has been made, the Registrar shall, in accordance with the Award, render an accounting to the parties of the advances received and return any unexpended balance to the parties or require the payment of any amount owing from the parties.

#### **Article 55. Award of Costs of Arbitration**

1. In its award, the Arbitral Tribunal shall fix the costs of arbitration, which shall consist of:

- (i) the Registration Fees
- (ii) the Administration Fees
- (iii) the Arbitrators' Fees
- (iv) the properly incurred travel, communication and other expenses of the arbitrators which shall be in compliance with the Schedule of fees applicable on the date on which the Request for Arbitration is received by the Registrar

- (v) the costs of expert advice and such other assistance required by the Tribunal pursuant to the Rules and
- (vi) such other expenses as are necessary for the conduct of the arbitration proceedings, such as the cost of meeting and hearing facilities, which shall be in compliance with the Schedule of fees applicable on the date on which the Request for Arbitration is received by the Registrar (“Hearings and Meetings expenditures”).

2. The Arbitral Tribunal shall, subject to any agreement of the parties, apportion the costs of arbitration and the Registration and Administration fees between the parties in the light of all the circumstances and the outcome of the arbitration.

#### **Article 56. Award of Costs Incurred by a Party**

In its Award, the Arbitral Tribunal may, subject to any contrary agreement by the parties and in the light of all the circumstances and the outcome of the arbitration, order a party to pay the whole or part of reasonable expenses incurred by the other party in presenting its case, including those incurred for legal representatives and witnesses.

### **SECTION 8. MISCELLANEOUS**

#### **Article 57. Exclusion of Liability**

Except in respect of deliberate wrongdoing, the Arbitrator or Arbitrators, BIR, the Registrar, the Chairman of the Arbitration Committee or and any person appointed by the Arbitral Tribunal shall not be liable to a party for any act or omission in connection with the arbitration, to the extent permitted under the applicable law.

#### **Article 58. General Rule**

In all matters not expressly provided for in the Rules, the Arbitration Committee and the Arbitral Tribunal shall act in the spirit of the Rules and shall make every effort, including stipulating reasonable additional rules to the Rules, to make sure that the arbitration is not blocked and that any Award is enforceable at law.

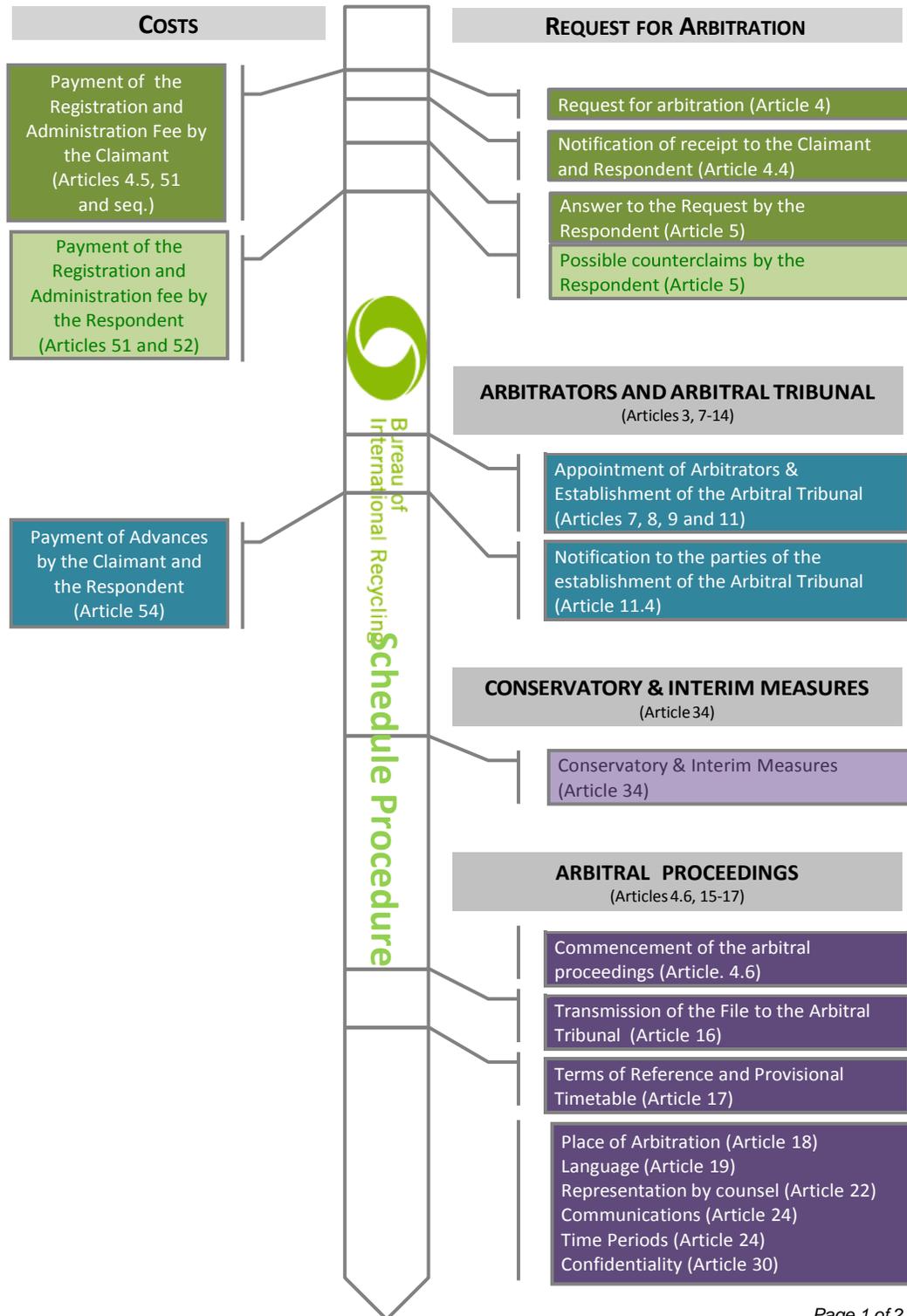
#### **Article 59. Modified Time Limits**

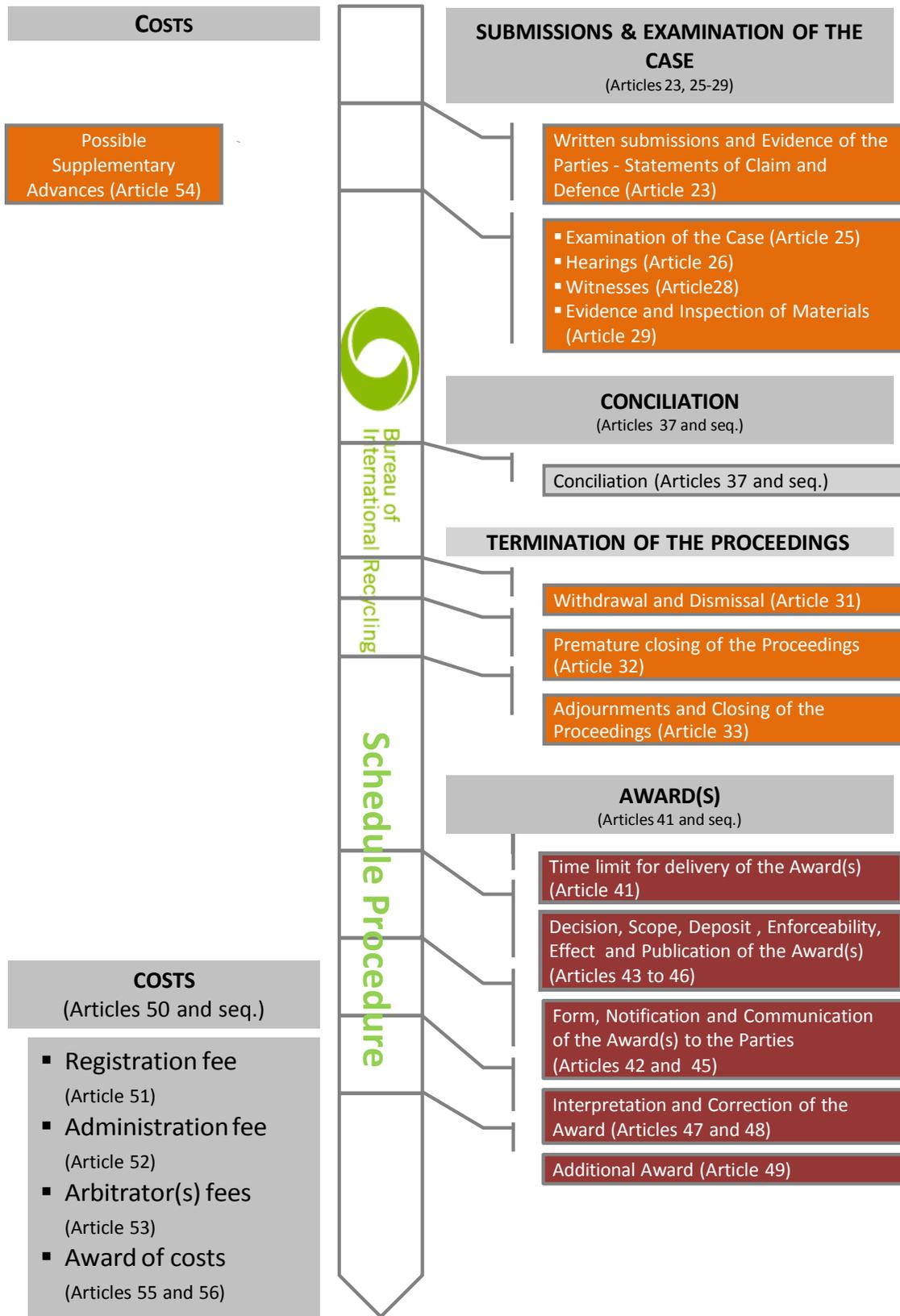
1. The Arbitral Tribunal shall ensure that the proceedings take place with due expedition.
2. The parties may agree to shorten the various time limits set out in the Rules. Any such agreement shall only become effective only prior approval of the Arbitral Tribunal.
3. The Chairman of the Arbitration Committee may, at its own initiative, extend any time limit if deems it necessary to do so, in order to enable the Arbitral Tribunal or the

Chairman of the Arbitration Committee to perform their responsibilities in accordance with the Rules.

4. The Arbitral Tribunal may at its own initiative extend in exceptional cases a period of time fixed by the Rules. In urgent cases, such an extension may be granted by the Presiding Arbitrator alone.

**Summary sheet with time-line re different stages of the procedure**





**BIR RULES OF ARBITRATION****SCHEDULE OF FEES**

BIR believes that arbitration should be cost effective. The costs of arbitration depend on different factors, including the amount in dispute and its complexity but also the parties conduct.

<b>TYPE OF FEE</b>	<b>AMOUNT IN DISPUTE IN EURO OR EQUIVALENT IN US DOLLARS)</b>
<b>Registration Fee</b>	1000€
<b>Administration Fee *</b>	1000€
<b>Arbitrator(s) Fees *</b>	Min. 500€(covering 5 hours) + 100€for any additional hour
<b>Other Arbitrators Expenses</b>	Only when applicable
<b>Hearings and meetings expenditures</b>	Only when applicable

An arbitrator shall be required to maintain a detailed and accurate record of the work done and the time spent on the arbitration. Following the termination of the arbitration, a copy of such records shall be provided to the parties and the Registrar.

**APPLICATION FOR ARBITRATION**

<b>CLAIMANT</b>
-----------------

- Full Name of Claimant: \_\_\_\_\_
- Company Registration Number: \_\_\_\_\_
- Registered Address of the Claimant:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- Representatives of the Party (full name, address, telephone & mobile phone, email address):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Counsel(s) of the Claimant (full name, address, telephone & mobile phone, email address)<sup>1</sup>:

\_\_\_\_\_

\_\_\_\_\_

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<sup>1</sup> Retaining a Legal Counsel is optional although recommended, since the arbitration process is adversarial and its outcome is binding.





Any other observations that the Claimant considers useful:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- Please annex all documentation necessary to support the claim.
- Please annex copy of the banking powers of the signatory (ies) of the Party.

▪ Date: \_\_\_\_\_

- Signatures  
(Full name and function)

_____	_____
_____	_____
_____	_____

- Note:

*Signatures can be officialised by a notary public or other officer qualified to administer an oath. The form of notarial acknowledgement varies in different jurisdictions, and the acknowledgment should conform to legal requirements of the jurisdiction in which it is made.*

- *The parties agree that the Arbitration, including the designation of the Arbitrator(s), and the conduct of the hearings, is to be governed by the Rules for BIR Arbitration<sup>2</sup> and hereby waive any right to withdraw from or revoke this instrument after the Arbitrator(s) has/have accepted their designation hereunder.*

18/12/2015

<sup>2</sup> The BIR Rules for Arbitration can be freely consulted on <http://www.bir.org/membership/bir-rules-of-arbitration>

**BIR – REPRESENTING THE FUTURE LEADING RAW MATERIAL SUPPLIERS**

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