

## **Annex III Rules of Procedure of Arbitral Panel**

### **General provisions**

1. For the purposes of this Agreement and Chapter X:

**arbitral panel** means an arbitral panel established pursuant to Article 63;

**complaining Party** means a Party that requests the establishment of an arbitral panel under Article 63; and

**responding Party** means a Party that has been complained against pursuant to Article 63.

### **Notifications**

2. Any request, notice, written submissions or other document shall be delivered by either Party or the arbitral panel by delivery against receipt, registered post, courier, facsimile transmission, telex, telegram or any other means of telecommunication that provides a record of the sending thereof.
3. A Party shall provide a copy of each of its written submissions to the other Party and to each of the panelists. A copy of the document shall also be provided in electronic format.
4. All notifications shall be made and delivered to each Party.
5. Minor errors of a clerical nature in any request, notice, written submission or other document related to the arbitral panel proceeding may be corrected by delivery of a new document clearly indicating the changes.
6. If the last day for delivery of a document falls on a legal holiday of a Party, the document may be delivered on the next business day.

### **Commencing the arbitration**

7. Unless the Parties otherwise agree, they shall meet with the arbitral panel within 15 days following the composition of the arbitral panel in order to determine such matters that the Parties or the arbitral panel deems appropriate.

### **Initial submissions**

8. The Party shall deliver its initial written submission no later than 20 days after the composition of the arbitral panel. The responding Party shall deliver its written counter-submission no later than 30 days after the date of delivery of the initial written submission.

### **Operation of arbitral panels**

9. The chair of the arbitral panel shall preside at all of its meetings.

10. Except as otherwise provided in these rules, the arbitral panel may conduct its activities by any means, including telephone, facsimile transmissions or computer links.

11. Only panelists may take part in the deliberations of the arbitral panel.

12. The drafting of the report shall remain the exclusive responsibility of the arbitral panel.

13. Where a procedural question arises that is not covered by these rules, an arbitral panel may adopt an appropriate procedure that is not inconsistent with this Agreement.

14. When the arbitral panel considers that there is a need to modify any time period applicable in the proceeding, or to make any other procedural or administrative adjustment in the proceeding, it shall inform the Parties in writing of the reasons for the modification or adjustment with the indication of the period or adjustment needed.

### **Hearings**

15. The Chair shall fix the date and time of the hearing in consultation with the Parties and the other members of the arbitral panel. The Chair shall notify in writing to the Parties of the date, time and location of the hearing. Unless either of the Parties disagrees, the arbitral panel may decide not to convene a hearing.

16. Unless the Parties otherwise agree, the hearing shall be held in the responding Party's territory. The responding Party shall be in charge of the logistical administration of dispute settlement proceedings, in particular the organization of hearings, unless otherwise agreed.

17. The arbitral panel may convene additional hearings if the Parties so agree.

18. All panelists shall be present at hearings.

19. No later than five days before the date of a hearing, each Party shall deliver a

list of the names of those representatives or advisers who will be attending the hearing.

20. The hearings of the arbitral panel shall be held in closed session.

21. The arbitral panel shall conduct the hearing in the following manner: argument of the complaining Party; argument of the responding Party; rebuttal arguments of the Parties; the reply of the complaining Party; the counter-reply of the responding Party. The Chair may set time limits for oral arguments to ensure that each Party is afforded equal time.

22. The arbitral panel may direct questions to either Party at any time during a hearing.

23. Within 15 days after the date of the hearing, each Party may deliver a supplementary written submission responding to any matter that arose during the hearing.

### **Questions in writing**

24. The arbitral panel may at any time during the proceedings address questions in writing to one or both Parties. The arbitral panel shall deliver the written questions to the Party to whom the questions are addressed.

25. A Party to whom the arbitral panel addresses written questions shall deliver a copy of any written reply to the other Party and to the arbitral panel. Each Party shall be given the opportunity to provide written comments on the reply within five days after the date of delivery.

### **Confidentiality**

26. The Parties shall maintain the confidentiality of the arbitral panel's hearings. Each Party shall treat as confidential the information submitted by the other Party to the arbitral panel which that Party has designated as confidential. Where a Party submits a confidential version of its written submissions to the arbitral panel, it shall also, upon request of the other Party, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public, no later than 15 days after the date of either the request or the submission, whichever is later. Nothing in these rules shall preclude a Party from disclosing statements of its own positions to the public.

### ***Ex parte* contacts**

27. The arbitral panel shall not meet or contact a Party in the absence of the other Party.

28. No Party may contact any panelist in relation to the dispute in the absence of the other Party or other panelists.

29. No panelist may discuss an aspect of the subject matter of the proceeding with a Party or both Parties in the absence of the other panelists.

### **Role of experts**

30. Upon request of a Party or on its own initiative, the arbitral panel may obtain information and technical advice from any person or body that it deems appropriate. Any information so obtained shall be submitted to the Parties for comments.

31. When a request is made for a written report of an expert, any time period applicable to the arbitral panel proceeding shall be suspended for a period beginning on the date of delivery of the request and ending on the date the report is delivered to the arbitral panel.

### **Cases of urgency**

32. In cases of urgency referred to in Article 69 of this Agreement, the arbitral panel shall appropriately adjust the time periods mentioned to in these rules.

### **Working language**

33. The working language of the dispute settlement proceedings shall be English.

34. Written submissions, documents, oral arguments or presentations at the hearings, initial and final reports of the arbitral panel, as well as all other written or oral communications between the Parties and the arbitral panel, shall be conducted in the working language.

35. Any Party may provide comments on a translated version of a document that is prepared in accordance with these rules.

### **Computation of time**

36. Where anything under this Agreement or these rules is to be done, or the arbitral panel requires anything to be done, within a number of days after, before or of a specified date or event, the specified date or the date on which the specified event occurs shall not be included in calculating that number of days.

37. Where, by reason of the operation of Rule 6, a Party receives a document on a date other than the date on which the same document is received by the other Party, any period of time the calculation of which is dependent on such receipt shall be calculated from the date of receipt of the last such document.