

PROCEDURAL RULES

CHINA INTERNATIONAL ECONOMIC AND TRADE ARBITRATION COMMISSION CIETAC

Article 4 Scope of Application

1. These Rules uniformly apply to CIETAC and its sub-commissions and centers.
2. The parties shall be deemed to have agreed to arbitration in accordance with these Rules if they have provided for arbitration by CIETAC.
3. Where the parties agree to refer their dispute to CIETAC for arbitration but have agreed on a modification of these Rules or have agreed on the application of other arbitration rules, the parties' agreement shall prevail unless such agreement is inoperative or in conflict with a mandatory provision of the law as it is applicable to the arbitration proceedings. Where the parties have agreed on the application of 3 other arbitration rules, CIETAC shall perform the relevant administrative duties.
4. Where the parties agree to refer their dispute to arbitration under these Rules without providing the name of an arbitration institution, they shall be deemed to have agreed to refer the dispute to arbitration by CIETAC.
5. Where the parties agree to refer their disputes to arbitration under CIETAC's customized arbitration rules for a specific trade or profession, the parties' agreement shall prevail. However, if the dispute falls outside the scope of the specific rules, these Rules shall apply.

Article 20 Representation

A party may be represented by its authorized Chinese and/or foreign representative(s) in handling matters relating to the arbitration. In such a case, a Power of Attorney shall be forwarded to CIETAC by the party or its authorized representative(s).

Article 22 Duties of Arbitrators

An arbitrator shall not represent either party, and shall be and remain independent of the parties and treat them equally

Article 29 Disclosure

1. An arbitrator nominated by the parties or appointed by the Chairman of CIETAC shall sign a Declaration and disclose to CIETAC in writing any facts or circumstances likely to give rise to justifiable doubts as to his/her impartiality or independence.
2. If circumstances that need to be disclosed arise during the arbitration proceedings, the arbitrator shall promptly disclose such circumstances in writing to CIETAC.
3. The Declaration and/or the disclosure of the arbitrator shall be communicated to the parties.

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Article 30 Challenge to the Arbitrators

1. Upon receipt of the Declaration and/or the written disclosure of an arbitrator, a party which intends to challenge the arbitrator on the grounds of the facts or circumstances disclosed by the arbitrator shall forward the challenge in writing within ten (10) days from the date of such receipt. If a party fails to file a challenge within the above time limit, it may not subsequently challenge the arbitrator on the basis of the matters disclosed by the arbitrator.
2. A party which has justifiable doubts as to the impartiality or independence of an arbitrator may challenge that arbitrator in writing, and shall state the facts and reasons on which the challenge is based, with supporting evidence.
3. A party may challenge an arbitrator in writing within fifteen (15) days from the date it receives the Notice of Formation of the Arbitral tribunal. Where a party becomes aware of reason for a challenge after such receipt, the party may challenge the arbitrator in writing within fifteen (15) days after such reason has become known, but not later than the conclusion of the last oral hearing.
4. The challenge by one party shall be promptly communicated to the other party, the arbitrator being challenged and the other members of the arbitral tribunal.
5. Where an arbitrator is challenged by one party and the other party agrees to the challenge, or the arbitrator being challenged voluntarily withdraws from his/her office, such arbitrator shall no longer be a member of the arbitral tribunal. However, in neither case shall it be implied that the reasons for the challenge are sustained.
6. In circumstances other than those specified in the preceding Paragraph 5, the Chairman of CIETAC shall make a final decision on the challenge, with or without stating the reasons.
7. An arbitrator who has been challenged shall continue to serve on the arbitral tribunal until a final decision on the challenge has been made by the Chairman of CIETAC.

Article 31 Replacement of Arbitrators

1. In the event that an arbitrator is prevented *de jure* or *de facto* from fulfilling his/her functions, or fails to fulfill his/her functions in accordance with the requirements of these Rules or within the time period specified in these Rules, the Chairman of CIETAC shall have the power to decide to replace the arbitrator. Such arbitrator may also voluntarily withdraw from his/her office.

2. The Chairman of CIETAC shall make a final decision on whether or not an arbitrator should be replaced, with or without stating the reasons.

3. In the event that an arbitrator is unable to fulfill his/her functions due to being challenged or replaced, a substitute arbitrator shall be nominated according to the

same procedures and time period that applied to the nomination of the arbitrator being replaced. If a party fails to nominate a substitute arbitrator, the substitute arbitrator shall be appointed by the Chairman of CIETAC. After the replacement of an arbitrator, the arbitral tribunal shall decide whether and to what extent the previous proceedings in the case shall be repeated.

Article 33 Conduct of Hearing

1. The arbitral tribunal shall examine the case in any way it deems appropriate unless otherwise agreed by the parties. Under all circumstances, the arbitral tribunal shall act impartially and fairly and shall afford a reasonable opportunity to all parties to make submissions and arguments.
2. The arbitral tribunal shall hold oral hearings when examining the case. However, the arbitral tribunal may examine the case on the basis of documents only, if the parties so agree and the arbitral tribunal consents or the arbitral tribunal deems that oral hearings are unnecessary and the parties so agree.
3. Unless otherwise agreed by the parties, the arbitral tribunal may adopt an inquisitorial or adversarial approach in hearing the case, having regard to the circumstances of the case.
4. The arbitral tribunal may hold deliberations at any place or in any manner that it considers appropriate.
5. Unless otherwise agreed by the parties, the arbitral tribunal may, if it considers it necessary, issue procedural orders or question lists, produce terms of reference, or hold pre-hearing conferences, etc.

Article 39 Evidence

1. Each party shall bear the burden of proving the facts on which it relies to support its claim, defense or counterclaim, and provide the basis for its opinions, arguments and counter-arguments.
2. The arbitral tribunal may specify a time period for the parties to produce evidence and the parties shall produce evidence within the specified time period. The arbitral tribunal may refuse to admit any evidence produced after that period has expired. If a party experiences difficulties in producing evidence within the specified time period, it may apply for an extension before the expiration of the 16 period. The arbitral tribunal shall decide whether or not to extend the time period.
3. If a party bearing the burden of proof fails to produce evidence within the specified time period, or if the produced evidence is not sufficient to support its claim or counterclaim, it shall bear the consequences thereof

UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW MODEL LAW UNCITRAL 2006 Revisions

Article 12. Grounds for challenge

1. When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and

throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.

2. An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

Article 13. Challenge procedure

1. The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph (3) of this article.
2. Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in article 12(2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.
3. If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph (2) of this article is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the court or other authority specified in article 6 to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

Article 18. Equal treatment of parties

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

Article 19. Determination of rules of procedure

1. Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.
2. Failing such agreement, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

Article 34. Application for setting aside as exclusive recourse against arbitral award

1. Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.
2. An arbitral award may be set aside by the court specified in article 6 only if:
 - a) the party making the application furnishes proof that:
 - i. a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not 20 UNCITRAL Model Law on

International Commercial Arbitration valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State; or

- ii. the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
 - iii. the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or
 - iv. the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or
- b) the court finds that:
- i. the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or
 - ii. the award is in conflict with the public policy of this State.
3. An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal.
 4. The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

NEW YORK CONVENTION OF THE RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS

New York Convention

Article II

1. Each Contracting State shall recognize an agreement in writing under which the parties under take to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.
2. The term 'agreement in writing' shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.
3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at

the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Article V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:
 - a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
 - b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
 - c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
 - d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
 - e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:
 - a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
 - b) The recognition or enforcement of the award would be contrary to the public policy of that country.

INTERNATIONAL BUSINESS ASSOCIATION GUIDELINES ON CONFLICTS OF INTERESTS IN INTERNATIONAL ARBITRATION IBA Guidelines

Non-Waivable Red List

The two-part Red List sets out those situations where a conflict of interest could arise. The situations on the non waivable Red List are illustrations of situations deriving from the principal that no person can be their own judge and therefore disclosure does not solve the problem.

1.2. The arbitrator is a manager, director, or member of a supervisory board, or has a similar controlling influence in one of the parties.

Waivable Red List

2.3.8. The arbitrator has a close family relationship with one of the parties or with a manager, director or member of the supervisory board or any person having a similar controlling influence in one of the parties or an affiliate of one of the parties or with a counsel representing a party.

Green List

6. The Green List contains a non-exhaustive enumeration of specific situations where no appearance of, and no actual, conflict of interest exists from the relevant objective point of view. Thus, the arbitrator has no duty to disclose situations falling within the Green List. In the opinion of the Working Group, as already expressed in the Explanation to General Standard 3(a), there should be a limit to disclosure, based on reasonableness; in some situations, an objective test should prevail over the purely subjective test of 'the eyes of the parties.'

4.4. Contacts with another arbitrator or with counsel for one of the parties

4.4.1 The arbitrator has a relationship with another arbitrator or with the counsel for one of the parties through membership in the same professional association or social organization.