

Constitution and the Rules of the Arbitration Centre of the
Institute for the Development of Commercial Law and Practice



CONSTITUTION OF THE ICLP ARBITRATION CENTRE

1. Interpretation

In these presents, unless the context otherwise requires

“Category”	means a category mentioned in Section 3(2) of the Constitution.
“Centre”	means the ICLP Arbitration Centre.
“Chairman”	means the Member of the Board appointed as Chairman of the Board.
“Constitution”	means the Constitution of the Centre.
“Council”	means the Council of Management of the ICLP.
“Deputy Chairman”	means the Member of the Board appointed as Deputy Chairman of the Board.
“Dispute”	means a commercial dispute.
“ICLP”	means the Institute for the Development of Commercial Law and Practice.
“Member”	means a Member of the Board.
“Parties”	means all the parties to a dispute.
“Party”	means a party to a dispute.
“Rules”	means the Rules of the ICLP Arbitration Centre.
“Secretary General”	means the Secretary General of the ICLP Arbitration Centre.
“The Act”	means the Arbitration Act. No. 11 of 1995.
“The Board”	means all the Members of the ICLP Arbitration Centre Board including where the context so requires or admits the Member of the Board assembled at a Board Meeting.
“These presents”	means the Constitution and the Rules.

The words importing the singular number only shall include the plural and vice-versa and words importing the masculine gender shall include the feminine gender and words importing persons shall include corporations and companies.

Save as aforesaid any words or expressions defined in the Act shall if not inconsistent with the subject or context bear the same meaning in these presents.

2. Organisation of the ICLP Arbitration

(1) There shall be a body within the ICLP to resolve domestic and international commercial disputes.

(2) The name of such body shall be the "ICLP Arbitration Centre"

(3) The Centre shall function as a separate body within the ICLP subject to the provisions contained in the Constitution and the Rules

3.(1) The Board

There shall be a Board named **The Board of the ICLP Arbitration Centre**.

3.(2) Composition of the Board

The Board shall comprise of six (6) members of whom two (2) shall be lawyers, two (2) shall be businessmen of good repute and standing and other two (2) members shall be of good repute and standing.

3.(3) Powers of the Board

The Board shall be vested with the powers contained in the Rules.

3.(4) Duties and functions of the Board

The Board shall perform and discharge the duties and functions contained in the Rules.

3.(5) Appointment of the Board

The Members of the Board shall be appointed by the Council of ICLP.

3.(6) Period and vacation of office

Each member shall hold office for a period of three (3) years unless such office is vacated by removal, resignation or death of the member.

3.(7) Reappointment

A member shall be eligible for re-appointment.

3.(8) Removal from office

The Council shall have the power to remove any Member of the Board of the ICLP Arbitration Centre from office at any time during the period of three (3) years.

3.(9) Resignation

Any member may at any time during the period of three (3) years resign from office by sending a letter to the Secretary General.

3.(10) Filling vacated office

In the event of vacation of office by removal, resignation or death, the Council shall appoint another person from the same category as that of the vacating member.

3.(11) Period of incoming member

The member so appointed in place of the vacating member shall subject to Section 3 (8) and (9) of the Constitution hold office for the unexpired period of the term of the vacating member.

4. Chairman

(1) The Council shall appoint, out of the two (2) businessmen. Members of the Board, one (1) Member as the Chairman of the Board. The other businessmen member shall be the Deputy Chairman of the Board.

5. Only three members to meet at any one time

(1) Meetings of the Board shall be of three (3) members of the Board one (1) each from a category.

(2) The Chairman or in his absence the Deputy Chairman shall nominate the three (3) members that should attend the meeting of the Board.

(3) The Chairman or in his absence the Deputy Chairman shall preside at the Board Meetings.

(4) Decisions of the Board shall be reached only at such meetings and such decisions shall be final and conclusive.

Provided however that a decision reached by the three (3) members appointed in accordance with Article 5(2) hereof, by a resolution in writing signed by all the said three (3) members expressly consenting or dissenting thereto and

communicated by means of post, hand delivery, facsimile transceiver or otherwise, shall be valid and effectual as if it had been passed at a meeting of the said three (3) members duly convened and constituted.

6. Minutes of Board Meetings

Minutes of Board Meetings shall be kept by the Centre of the Centre.

7. Centre of the Centre

The Centre shall have a Centre composed of one or several persons employed by the ICLP.

8. Secretary General

(1) There shall be a Secretary General appointed by the Council of Management of the ICLP.

(2) The Secretary General shall be an Attorney-at-Law.

(3) The Board may appoint any person to act for the Secretary General.

(4) The Centre of the Centre shall be under the direction and control of the Secretary General and/or by any other person nominated or appointed by the Board.

9.(1) Duties and functions of the Secretary General

Duties and functions of the Secretary General shall be to ensure the efficient functioning of the Centre and to promote the use of the Centre for the resolution of domestic and international disputes.

9.(2) Arbitration under other Rules

The Secretary General may facilitate through the Centre resolution of commercial disputes, international or domestic, under Rules other than the ICLP Arbitration Centre Rules provided that such other Rules are deemed acceptable by the Council.

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ARBITRATION RULES

as adopted by the Council of Management on 1st April 2021

Introduction

These Rules have been adopted by the Council of Management of the Arbitration Centre of the Institute for the Development of Commercial Law and Practice (Guarantee) Limited for use by parties who have included a clause submitting any disputes to Arbitration by the Arbitration Centre of the Institute for the Development of Commercial Law and Practice (“ICLP Arbitration Centre”).

Application

These Rules may be adopted in a written agreement at any time before or after a dispute has arisen and may be adopted for use in both domestic and international arbitrations commenced under a contract or treaty. Provisions regarding the scope of application of these Rules are set out in Rule 1.

Effectiveness

These Rules have been adopted to take effect from the 01st of April 2021 even if the agreement to arbitrate was entered in to prior to such date unless the parties have specifically agreed that the rules to apply are that of a previous date.

RULE 1: Scope of Application and Interpretations

- 1.1. Where the parties have agreed in writing to refer a future or existing dispute to the ICLP Arbitration Centre for arbitration or to arbitration in accordance with the Rules for Arbitration of the ICLP Arbitration Centre, the parties shall be deemed to have agreed that the arbitration shall be conducted pursuant to and administered by the ICLP Arbitration Centre in accordance with these Rules.
- 1.2. These Rules shall come into force on 01st of April 2021 and, unless otherwise agreed by the parties, shall apply to any arbitration which is commenced on or after that date.

1.3. In these Rules:

“Award” includes a partial, interlocutory, interim, or final award;

“The Board” shall mean the members of the Board of the ICLP Arbitration Centre.

“Dispute” means a commercial dispute;

“Claimant” is a party wishing to commence an arbitration under these Rules and/or includes a party added as a Claimant under Rule 10;

“Respondent” is a party against whom an arbitration is commenced under these Rules and/or includes a party added as a Respondent under Rule 10;

“Party” means a party to a dispute;

“Practice Notes” mean the guidelines formulated and published by the ICLP Arbitration Centre, from time to time to supplement, regulate, and implement these Rules for the purpose of facilitating the administration of arbitrations governed by these Rules.

“Rules” mean the Arbitration Rules of the ICLP Arbitration Centre;

“Secretary-General” means the Secretary-General of the ICLP Arbitration Centre;

“The Centre” means the ICLP Arbitration Centre.

“Tribunal” includes a sole arbitrator or all the arbitrators where more than one arbitrator is appointed, in terms of these Rules.

Any pronoun in these Rules shall be understood to be gender-neutral. Any singular noun shall be understood to refer to the plural and vice versa in the appropriate circumstances.

RULE 2: Request for Arbitration

- 2.1. A request for the resolution of a dispute by arbitration under these Rules (“Request for Arbitration” or “Request”) shall be submitted to the Centre. The date on which the Request is received by the Centre shall, for all purposes, be deemed to be the date of the commencement of the arbitration, and shall include:
 - 2.1.1. the names in full, description, addresses, telephone numbers, facsimile numbers, and electronic mail addresses, if known, of the parties to the arbitration and their representatives, if any;
 - 2.1.2. a description of the nature, circumstances, and facts of the dispute giving rise to the claim or claims and the basis of such claim or claims;
 - 2.1.3. a preliminary statement of the relief sought by the Claimant, including where possible the amounts of any quantified claims and an estimate of the monetary value of any other claims;
 - 2.1.4. a reference to the contract, agreement, or other instrument upon which the claim is based and any other relevant agreement together with a copy thereof, where possible;
 - 2.1.5. a reference to and a copy of the arbitration agreement;
 - 2.1.6. all relevant particulars and observations, if any, concerning the number of arbitrators and any nomination of an arbitrator, or a proposal for a sole arbitrator;
 - 2.1.7. such other documents or information as it considers appropriate or as may, in the Claimant’s view, contribute to the efficient resolution of the dispute.
- 2.2. Together with the submission of such Request, the Claimant shall:
 - 2.2.1. submit the number of copies thereof, as required by Rule 31.7;
 - 2.2.2. make payment of the requisite filing fee as stated in Appendix I (Arbitration Costs and Fees) in force on the date the Request is submitted.

- 2.3. In the event the Claimant fails to comply with the requirements set out in Article 2.2 above, the Centre shall fix a time limit within which the Claimant must comply with the said requirements. If the Claimant fails to comply with the said requirements, the Request shall be deemed invalid, without prejudice to the Claimant's right to submit the same claim or claims at a later date in another Request.

RULE 3: Processing of Request

- 3.1. Within five (5) days of the submission of the Request for Arbitration to the Centre such Request shall be submitted by the Centre to the Chairperson of the Board.
- 3.2. On receipt of such Request for Arbitration, the Chairperson shall expeditiously and not later than ten (10) days of receipt of such Request by the Centre, convene a meeting of the Board to consider such Request.
- 3.3. Where the Board is of the opinion that such Request for Arbitration may be administered by the Centre, the Board shall convey such opinion to the Centre for the Centre to take the further steps necessary in accordance with the Rules.
- 3.4. The Request for Arbitration is deemed to be complete when all the requirements of Rule 2.1 and Rule 2.2 are fulfilled.
- 3.5. Where the Board is of the opinion that the Request for Arbitration cannot be administered by the Centre for resolution under the Rules, the Board shall refer the request back to the Centre for necessary action.

RULE 4: Notice to Respondent

In the event that the Board decides that the Request for Arbitration should be administered under the Rules, the Centre shall, within seven (7) days from such decision, notify the Respondent to submit a response to the Centre and the Centre shall transmit a copy of the Request for Arbitration together with such notice.

RULE 5: Response to the Request for Arbitration

5.1. The Respondent shall file a Response to the Request with the Centre within thirty (30) days of receiving the Notice to the Respondent by the Centre which shall include:

5.1.1. the full name, description, address and other contact details of the Respondent and any person(s) representing the Respondent in the arbitration;

5.1.2. its comments as to the nature and circumstances of the dispute giving rise to the claim or claims and the basis upon which such claim or claims are made;

5.1.3. its response to the relief sought by the Claimant;

5.1.4. any counterclaims or pleas for set-off which shall include:

5.1.4.1. a brief statement describing the nature and circumstances of any counterclaim or set-off amount and specifying the relief claimed, and including where possible the amounts of any quantified counterclaims or set-off amount and, to the extent possible, an estimate of the monetary value of any other counterclaims or set-off amount;

5.1.4.2. a reference to the contract, agreement, or other instrument upon which the claim is based and any other relevant agreement together with, where possible, a copy thereof;

5.1.4.3. where counterclaims or pleas for set-off are made under more than one arbitration agreement, a reference to the arbitration agreement under which each counterclaim and/or plea for set-off is made;

5.1.4.4. such other documents or information with the counterclaims or plea for set-off as it considers appropriate or as may, in the Respondent's view, contribute to the efficient resolution of the dispute.

5.1.5. unless otherwise agreed by the parties, the nomination of an arbitrator if the arbitration agreement provides for three arbitrators or, if the arbitration

agreement provides for a sole arbitrator, comments on the Claimant's proposal for a sole arbitrator or a counter-proposal;

5.1.6. such other documents or information as the Respondent considers appropriate or as may, in the Respondent's view, contribute to the efficient resolution of the dispute.

5.2. Together with the submission of such Response, the Respondent shall:

5.2.1. submit the number of copies thereof as required by Rule 31.7;

5.2.2. make payment of the requisite filing fee as stated in Appendix I (Arbitration Costs and Fees) in force on the date the Response is submitted.

5.3. Failure by the Respondent to submit a reply or failure or refusal by the Respondent to take part in the arbitration or any stage thereof shall not prevent the continuance of the proceedings in the case.

5.4. The Centre may grant the respondent an extension of the time for submitting the Response, provided the application for such an extension contains the Respondent's observations or proposals concerning the number of arbitrators and their choice and, where required by Rule 14, the nomination of an arbitrator. If the respondent fails to do so, the Board shall proceed in accordance with the Rules.

5.5. The Response of the Respondent shall be communicated to all other parties by the Centre within fourteen (14) days of the receipt thereof.

RULE 6: Effect of the Arbitration Agreement

6.1. Where the parties have agreed to submit to arbitration under the Rules, they shall be deemed to have submitted to the Rules in effect on the date of the commencement of the arbitration.

6.2. By agreeing to arbitration under the Rules, the parties have accepted that the arbitration shall be administered by the Centre;

6.3. If any party against which a claim has been made

a) does not submit a Response, or

- b) raises one or more pleas concerning the existence, validity, or scope of the arbitration agreement; or raises one or more pleas concerning whether all of the claims made in the arbitration may be determined together in a single arbitration,

the arbitration shall proceed and any question of jurisdiction or whether the claims may be determined together in that arbitration shall be decided by the Tribunal;

- 6.4. Unless otherwise agreed, the Tribunal shall not cease to have jurisdiction because of any allegation that the contract which contains or was intended to contain an Arbitration Agreement is non-existent or null and void. The Tribunal shall continue to have jurisdiction to determine the parties' respective rights and to decide their claims and pleas even though the contract itself may be non-existent or null and void.

RULE 7: Security for Cost

- 7.1. The Board shall fix the amount of security for costs and the time within which each party shall make payment of its share thereof.
- 7.2. The amount thereof shall be fixed in accordance with the schedules and regulations issued by the Centre. The Board may fix separate sums for a counterclaim and for a plea by way of set-off. After notification by the Tribunal or on its own motion, the Board may, in the course of the arbitration, increase the security for costs.
- 7.3. In the event of a party failing to make payment as per Rule 8.1, the Board shall afford the other party the opportunity to do so. In the event that the required payment is not made, the case shall be wholly or partly dismissed or stayed by the Board.
- 7.4. Upon the appointment and constitution of the Tribunal and upon the provision of security, the Board shall transmit the file to the Tribunal without undue delay.

RULE 8: Payment of Security

- 8.1. Each party shall contribute half of such sums of money referred to in Rule 7.1 provided that one party may pay the entire sum if the other party refuses to do so or upon agreement by the parties.
- 8.2. The Centre may, in the course of the arbitration and thereafter, draw on the security to pay the arbitrators' fees and other costs of the arbitration.

RULE 9: Proof of Authority

At any time after the commencement of the arbitration, the Tribunal or the Centre may require proof of the authority of any party representative to represent the relevant party.

RULE 10: Joinder of Additional Parties

- 10.1. A party wishing to join an additional party to the arbitration shall submit its request for arbitration against the additional party (the "Request for Joinder") to the Centre.

The date on which the Request for Joinder is received by the Centre shall, for all purposes, be deemed to be the date of the commencement of the arbitration against the additional party.

Any such joinder shall be subject to the provisions of Rules 6.3 and 12.

No additional party may be joined after the confirmation or appointment of any arbitrator, unless all parties, including the additional party, otherwise agree.

The Centre may fix a time limit for the submission of a Request for Joinder.

- 10.2. The Request for Joinder shall contain the following information:
 - 10.2.1. the case reference of the existing arbitration;
 - 10.2.2. the name, description, address and other contact details of each of the parties, including the additional party; and
 - 10.2.3. the information specified in Rules 2.1.2 – 2.1.5.

- 10.3. The party filing the Request for Joinder may submit such other documents or information with the Request for Joinder as it considers appropriate or as may contribute to the efficient resolution of the dispute.
- 10.4. The provisions of Rules 2.2 and 5.1 shall apply *mutatis mutandis*, to the Request for Joinder.
- 10.5. The additional party shall submit a Response *mutatis mutandis*, with the provisions of Rules 5 and 6.
- 10.6. If the Request for Joinder is made prior to the constitution of the Tribunal, the Board shall, after consideration of the views of all parties, including the additional party, and having regard to the circumstances of the matter, decide whether to grant in whole or in part the application for joinder.
- Such a decision by the Board shall be without prejudice to the power of the Tribunal to subsequently decide any question as to its jurisdiction arising from such a decision. A decision of the Board rejecting the application for joinder shall be without prejudice to the rights of any party, including the additional party, to apply to the Tribunal for joinder in accordance with the Rules.
- 10.7. If the Request for Joinder is made after the constitution of the Tribunal, the Tribunal shall, after consideration of the views of all parties, including the additional party, and having regard to the circumstances of the matter, decide whether to grant in whole or in part the Request for Joinder. Such a decision by the Tribunal shall be without prejudice to its power to subsequently decide any question as to its jurisdiction arising from such a decision.
- 10.8. Where a Request for Joinder is granted under Rule 10.6 or Rule 10.7, any party who has not nominated an arbitrator or otherwise participated in the constitution of the Tribunal shall be deemed to have waived its right to nominate an arbitrator or otherwise participate in the constitution of the Tribunal, without prejudice to the right of such party to challenge an arbitrator in accordance with the Rules.
- 10.10. Where a Request for Joinder is granted under Rule 10.6 or Rule 10.7, the requisite filing fee under the Rules shall be payable.

RULE 11: Claims Between Multiple Parties

- 11.1. In an arbitration with multiple parties, claims may be made by any party against any other party, subject to the provisions of Rules 6.3 and 12 and provided that no new claims may be made after the appointment of the Tribunal without the authorization of the Tribunal.
- 11.2. Any party making a claim pursuant to Rule 11.1 shall provide the information specified in Rules 2.1.2 – 2.1.5.
- 11.3. In the process of the Centre transmitting the file to the Tribunal, the following provisions shall apply, *mutatis mutandis*, to any claim made: Rule 2.2.1; Rule 4; Rule 5.1 except for Rule 5.1.2 and Rule 5.1.3; and Rule 5.4 and Rule 5.5. Thereafter, the Tribunal shall determine the procedure for making a claim.

RULE 12: Multiple Contracts

Subject to the provisions of Rule 6.3, claims arising out of or in connection with more than one contract may be made in a single arbitration, irrespective of whether such claims are made under one or more than one arbitration agreement under the Rules.

RULE 13: Consolidation of Arbitrations

- 13.1. Prior to the constitution of any Tribunal in the arbitrations sought to be consolidated, the Board, not less than within ten (10) days may, at the request of a party and after considering the views of all parties, consolidate two or more arbitrations pending under the Rules into a single arbitration, where:
 - 13.1.1. the parties have agreed to consolidation; or
 - 13.1.2. all of the claims in the arbitrations are made under the same arbitration agreement; or
 - 13.1.3. all of the claims in the arbitrations are made under more than one arbitration agreement, the arbitrations are between the same parties, or the disputes in the arbitrations arise in connection with the same legal relationship, transaction, or series of transactions, and the Board finds the arbitration agreements to be compatible.

- 13.2. In deciding whether to consolidate, the Board may take into account any circumstance it considers to be relevant, including whether one or more arbitrators have been confirmed or appointed in more than one of the arbitrations and, if so, whether the same or different persons have been confirmed or appointed.
- 13.3. Where arbitrations are consolidated, they shall be consolidated into the arbitration that commenced first, unless otherwise agreed by all parties.
- 13.4. The Board's decision to grant an application for consolidation under Rule 13 is without prejudice to the Tribunal's power to subsequently decide any question as to its jurisdiction arising from such decision. The Board's decision to reject an application for consolidation under Rule 13, in whole or in part, is without prejudice to any party's right to apply to the Tribunal for consolidation. Any arbitrations that are not consolidated shall continue as separate arbitrations under these Rules.

RULE 14: Constitution of the Arbitral Tribunal and Appointment of Arbitrators

Number of Arbitrators

- 14.1. The disputes shall be decided by a sole arbitrator or by three arbitrators.
- 14.2. Where the parties have not agreed upon the number of arbitrators, the Board shall appoint a sole arbitrator, save where it appears to the Board that the dispute is such as to warrant the appointment of three arbitrators. In such case, the Claimant shall nominate an arbitrator within fifteen (15) days from receipt of the notification of the decision of the Board, and the Respondent shall nominate an arbitrator within fifteen (15) days from receipt of the notification of the nomination made by the Claimant. If a party fails to nominate an arbitrator, the appointment shall be made by the Board.

Sole Arbitrator

- 14.3. Where the parties have agreed that the dispute shall be resolved by a sole arbitrator, they may, by agreement, nominate the sole arbitrator for confirmation.
- 14.4. If the parties fail to nominate a sole arbitrator within thirty (30) days from the date on which the Claimant's Request for Arbitration has been received by the other party, or within such additional time as may be directed by the Centre, the sole arbitrator shall be appointed by the Board.

Three Arbitrators

- 14.5. Where the parties have agreed that the dispute shall be resolved by three arbitrators, each party shall nominate, in the Request and in the Response respectively, one arbitrator for confirmation. If a party fails to nominate an arbitrator, the appointment shall be made by the Board.
- 14.6. The two arbitrators so nominated shall appoint a third arbitrator, who shall act as Chairperson of the Tribunal. If the two arbitrators so nominated are unable to appoint a third arbitrator within thirty (30) days from the confirmation or appointment of the said two arbitrators as co-arbitrators or within any time limit agreed to by the parties or fixed by The Centre, the Board may appoint a third arbitrator who shall act as Chairperson of the Tribunal.
- 14.7. In the event the parties have so agreed, the Board shall appoint all three arbitrators and shall designate one arbitrator to act as Chairperson of the Tribunal.
- 14.8. Where there are multiple Claimants or multiple Respondents and where the dispute is to be referred to three arbitrators, the multiple Claimants, jointly, and the multiple Respondents, jointly, shall nominate one arbitrator respectively for confirmation.
- 14.9. Where an additional party has been joined, and where the dispute is to be referred to three arbitrators, the additional party may, jointly with the Claimant(s) or with the Respondent(s), nominate an arbitrator for confirmation.
- 14.10. In the absence of a joint nomination pursuant to Rules 14.8 and 14.9, and where all parties are unable to agree to a method for the constitution of the Tribunal, the Board may appoint each member of the Tribunal and shall designate one of them to act as Chairperson of the Tribunal.

RULE 15: Duties of an Arbitrator

- 15.1. A person who is requested to accept appointment as an arbitrator shall disclose, without undue delay, any facts or circumstances which could give rise to reasonable doubts as to the said person's independence and/or impartiality as an arbitrator. If any relevant information is so disclosed, the Centre shall provide such information to the parties in writing and fix a time limit for any comments from the parties.

- 15.2. An arbitrator shall, from the time of his appointment and during the arbitration, disclose in writing and without delay to the Centre and to the parties any facts or circumstances as are referred to in Rule 15.1.
- 15.3. An arbitrator shall be and remain impartial to and independent of the parties involved in the arbitration throughout the proceedings and shall not act as advocate for any party in the arbitration.
- 15.4. By accepting to serve, arbitrators undertake to carry out their responsibilities in accordance with the Rules and in accordance with the fee schedule of the Centre unless otherwise agreed by the parties.
- 15.5. The decisions of the Board as to the appointment, confirmation, challenge, or replacement of an arbitrator shall be final.
- 15.6. Insofar as the parties have not provided and agreed otherwise, the Tribunal shall be constituted in accordance with the provisions of these Rules.

RULE 16: Challenge or Disqualification of Arbitrators

- 16.1. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.
- 16.2. A party may challenge the arbitrator nominated by that party only for reasons it became aware of after the appointment was made.
- 16.3. A party that intends to challenge an arbitrator shall do so by submitting to the Board, a written statement specifying the facts and circumstances upon which the challenge is based with copies thereof to the arbitrators and to each of the parties, and with the requisite payment of a challenge fee as stated by Appendix 1 (Schedule of Fees) in force on the date the Notice of Challenge is submitted. If the party making the challenge fails to pay the challenge fee within the time limit set by the Centre, the challenge shall be considered as withdrawn.
- 16.4. A challenge will be admissible only if it is submitted by a party within thirty (30) days from the receipt by that party of the notification of the appointment or confirmation of the arbitrator to which the challenge relates, or within thirty (30) days from the date

on which the party making the challenge was informed of the facts and circumstances on which the challenge is based, if such date is subsequent to the receipt of such notification.

- 16.5. The Board shall provide an opportunity for the challenged arbitrator, the other party or parties and any other members of the Tribunal to comment in writing on the challenge within a specified period of time. All such comments shall be communicated to the parties and to the Tribunal.
- 16.6. The Board shall thereafter decide on the admissibility of the challenge and, if necessary, on the merits of the challenge. The Board may decide on the merits of the challenge together with the admissibility of the challenge or within a reasonable time after the decision on the admissibility of the challenge.
- 16.7. The decision of the Board shall be final and conveyed to the arbitrators and to the parties.
- 16.8. In the event of a decision of the Board upholding the challenge, the arbitrator against whom the challenge was upheld shall be deemed to have been removed from acting as arbitrator with effect from the date of the said decision.

RULE 17: Replacement of Arbitrators

- 17.1. An arbitrator shall be replaced upon death, upon acceptance by the Board of the arbitrator's resignation, upon the Board upholding a challenge or upon the acceptance by the Board of a request of all parties for the replacement of an arbitrator.
- 17.2. An arbitrator may also be replaced by the Board upon the request of a party.
- 17.3. Before making a decision under Rule 17.2, the Board shall grant an opportunity for the arbitrator concerned, the parties, and any other members of the Tribunal to comment in writing within a fixed period of time. Such comments shall be communicated to the parties and to all the arbitrators.
- 17.4. In the replacement of an arbitrator, the Board shall have the discretion to decide whether or not to follow the process of nomination and appointment as set out in these Rules.

- 17.5. Upon reconstitution and after having given an opportunity for all parties to comment, the Tribunal shall determine if and to what extent the prior proceedings should be repeated before the reconstituted Tribunal.
- 17.6. Following the closing of replacement proceedings, instead of the replacement of an arbitrator, the Board may decide that the remaining arbitrators shall continue the arbitration, where in the opinion of the Board it is appropriate to do so. In making such a decision, the Board shall consider the views of the remaining arbitrators and all parties.

RULE 18: Seat of Arbitration

The seat of the arbitration shall be fixed by the Tribunal unless the parties have agreed upon the same, provided that the Tribunal may conduct hearings and meetings at any location it considers expedient or appropriate, with the consent of the parties, and that the Tribunal may deliberate at any location it considers convenient or appropriate.

RULE 19: Rules Governing the Proceedings

The Tribunal shall comply with any Rules stipulated by parties in the Arbitration Agreement and these Rules in determining the manner in which the proceedings are to be conducted. Where the Arbitration Agreement and these Rules are silent, the Tribunal may after consultation with the parties, settle on appropriate rules, whether or not reference is made thereby to the rules of procedure of a national law to be applied to the arbitration.

RULE 20: Language of the Arbitration

Unless parties have agreed on the language or languages to be used in the arbitration, the Tribunal shall determine the language of such arbitration.

RULE 21: Applicable Rules of Law

- 21.1. The parties shall be free to agree upon the rules of law to be applied by the Tribunal to the substance and/or merits of the dispute. In the absence of such agreement by the parties, the Tribunal shall decide upon the rules of law it deems appropriate to be applied.

- 21.2. In deciding upon the rules of law to be applied, the Tribunal shall take into account the provisions of the contract, if any, between the parties and any relevant trade usages.
- 21.3. The Tribunal shall assume the powers of an *amiabile compositeur* or decide *ex aequo et bono* only if the parties have agreed or agree to give it such powers.

RULE 22: Conduct of the Arbitration

- 22.1. The Tribunal and the parties shall make every effort to conduct the arbitration in an expeditious, practical, fair, and cost-effective manner. The Tribunal may decide, after consulting the parties, and on the basis of the relevant facts and circumstances of the case, that any hearing will be conducted by physical attendance or remotely by videoconference, telephone or other appropriate means of communication.
- 22.2. The Tribunal may require a party to be comprehensive in any or all statements filed in accordance with these Rules. The Tribunal may dismiss the case if the Claimant fails to comply with such a requirement. If the Respondent fails to do so, such failure shall not prevent the continuation of the proceedings.
- 22.3. A party may amend a Request for Arbitration or Response in the course of the proceedings provided that the case, as amended, is within the scope of the Arbitration Agreement and unless the Tribunal considers it inappropriate having regard to the point of time at which the request is made or where the Tribunal considers that prejudice may be caused to other parties due to the circumstances. This Rule will apply equally to the right of a party to introduce a plea for set-off or a counterclaim.
- 22.4. The Tribunal may, after considering the views of parties, adopt such procedural measures as it considers appropriate for effective case management, provided that any such measures are not contrary to any agreement of the parties.
- 22.5. Upon the request of any party, the Tribunal may make orders concerning the confidentiality of the arbitration proceedings or of any other matters in connection with the arbitration and may take measures for the protection of trade secrets and confidential information.
- 22.6. Each party shall be given a reasonable opportunity to present its case.

- 22.7. The Tribunal may, when it deems appropriate, require the submission of written affidavits and other documentary evidence.
- 22.8 Any witness who gives evidence may be questioned by each of the parties, their representatives, and by the Tribunal in such manner as the Tribunal may determine. The Tribunal may limit the appearances of witnesses to give oral evidence at any hearing.
- 22.9. At any time during the proceedings, the Tribunal may summon any party to provide additional evidence.
- 22.10. At the request of the Tribunal, the parties shall state the evidence on which they propose to rely and specify the issues they wish to prove thereby.
- 22.11. The Tribunal shall determine the relevance, admissibility and materiality of all evidence. The Tribunal may, in its discretion, exclude evidence and/or direct parties to focus their presentation of the case on specific issues, the decision of which may dispose of all or part of the case. The Tribunal is not bound by any rules of evidence under any applicable law in making such determinations.
- 22.12. The Tribunal may, after considering the views of the parties, appoint one or more experts to submit their opinion/opinions on a particular matter/matters. At the request of a party, the parties shall be given the opportunity to question any such expert at a hearing.
- 22.13. The parties shall comply with any order made by the Tribunal.
- 22.14. If a party fails to appear at a hearing or otherwise fails to comply with an order of the Tribunal and does not show valid cause for such failure, such failure shall not prevent the Tribunal from proceeding with the arbitration and from rendering an award.
- 22.15. The parties may appear in person or through duly authorized representatives. Additionally, parties may be assisted by advisors.

RULE 23: Waiver

A party who fails during the proceedings to object within a reasonable time to any deviation from the provisions of the Arbitration Agreement, the Rules, any other Rules applicable to the proceedings, or any direction of the Tribunal shall be deemed to have waived its right to challenge such deviation.

RULE 24: Closing of the Proceedings

- 24.1. After the last hearing concerning the matters to be decided in an Award or the filing of the last authorized submission concerning such matters, whichever is later, the Tribunal shall, without undue delay, declare the proceedings closed with respect to the matters to be decided in the award.
- 24.2. After the proceedings are closed, no further submission or argument may be made or evidence produced, with respect to the matters to be decided in the award, unless requested or authorized by the Tribunal.
- 24.3. The Tribunal may, upon application by a party or on its own motion and before an Award is made, re-open the proceedings. Such a decision of the Tribunal shall be communicated to the Centre and to all parties with reasons therefor.

RULE 25: Conservatory and Interim Measures

The Tribunal may, at the request of a party, order any interim or conservatory measure it deems appropriate. The Tribunal may make the granting of any such measure conditional upon the furnishing of the appropriate security by the requesting party. The grant of any such measure shall take the form of an order or an award that Tribunal considers appropriate.

RULE 26: The Award

- 26.1. The Award shall be made no later than eighteen (18) months from the date from which the file was transmitted to the Tribunal. At the request of the Tribunal, the Board may extend this period if it considers an extension appropriate in the circumstances of the matter.

- 26.2. Where the Tribunal is composed of more than one arbitrator, an Award is made by a majority decision. In the event that a majority is not attained, the Award shall be made by the Chairperson alone.
- 26.3. An Arbitrator may attach a dissenting opinion to the Award.
- 26.4. The Award shall be in writing and shall state the reasons upon which it is based and contain an order or declaration.
- 26.5. The Award shall be deemed to be made at the seat of arbitration and on the date stated therein.
- 26.6. An Award may be rendered even in the absence of the signature of an arbitrator provided that it has been signed by a majority of the arbitrators, or where a majority is not attained, by the Chairperson alone, and contain a verification by the arbitrator(s) so signing that the arbitrator(s) whose signature does not appear on the award took part in deciding the dispute.
- 26.7. If any arbitrator refuses and/or fails to participate and/or co-operate in the making of an Award, the remaining arbitrators may proceed. The remaining arbitrators shall provide written notice to all parties and to the Board of such refusal and/or failure.
- In deciding whether to proceed with the making of the Award in the absence of an arbitrator, the remaining arbitrators may take into account, *inter alia*, the stage of the arbitration, the reasons, if any, for the refusal and/or the failure of the absent arbitrator to participate in the making of the Award and the effect thereof upon the enforceability of the Award should the Award be rendered without the absent arbitrator and the prejudice caused to any party by any delay in rendering the Award.
- The remaining arbitrators shall state the reasons for proceeding without the absent arbitrator in any Award so made.
- 26.8. At the request of a party, part of the matter in dispute between the parties may be decided by a separate award provided that, if any party objects to the making of a separate award, such an award may be rendered only if the Tribunal deems that there are exceptional reasons therefor.

- 26.9. Where a party has partially admitted a claim, the Tribunal may render a separate Award on the part that has been admitted.
- 26.10. If the parties agree to a settlement after the file has been transmitted to the Tribunal, such settlement may be recorded in the form of an Award made by the consent of the parties, if so requested by the parties and if the Tribunal agrees to do so.
- 26.11. The Tribunal shall submit a copy of each Award to the Centre on or before fourteen (14) days of the date of such an Award.
- 26.12. The Centre shall within fourteen (14) days of the receipt of the copy of each Award submit a copy or copies thereof to each party.
- 26.13. Every Award shall be binding on the parties. By submitting the dispute to arbitration under the Rules, the parties undertake to carry out any Award without delay and shall be deemed to have waived their right to any form of recourse insofar as such waiver can validly be made.

RULE 27: Correction, Change and/or Interpretation of the Award

- 27.1. The Tribunal may, on its own initiative, correct a clerical, computational, or typographical error contained in an Award provided that such correction is submitted for approval to the Board within thirty (30) working days of the date of such Award.
- 27.2. Any application of a party for the correction of an error as referred to in Rule 27.1, or for the interpretation of an Award, or for a decision on a question which should have been decided in the Award but was not decided therein, or for the issuance of an additional Award as to claims presented in the arbitration but not dealt with in the Award, shall be made to the Centre within thirty (30) working days of the date of the receipt of the Award by such party, in the number of copies as stated in Rule 31.7. Upon receipt of such application as transmitted by the Centre, the Tribunal shall grant the other party a period not exceeding thirty (30) from the date of the receipt of the application by that party to submit any comments thereon. The Tribunal shall, if it considers appropriate, correct, interpret or render a decision with respect to an Award under this Rule within thirty (30) working days of the date of the receipt of any comments by the other party.

- 27.3. A decision by the Tribunal under Rules 27.1 or 27.2 shall take the form of an addendum and shall constitute part of the Award. The provisions of Rule 26 shall apply *mutatis mutandis* to any such decision.
- 27.4. The Centre may extend any time period granted to parties and/or to the Tribunal respectively to make any application, comment, correction, interpretation, and/or decision in respect of an Award, if it deems appropriate.

RULE 28: Payment of Fees or Costs of Arbitration

- 28.1. The costs of the arbitration shall include the fees and expenses of the arbitrators and the administrative expenses of the Centre, which are in accordance with the regulations of The Centre in force at the time of the commencement of the arbitration, as well as the fees and expenses of any experts appointed by the Tribunal. The parties shall be responsible for their own costs in relation to the arbitration.
- 28.2. The fees of the arbitrators and the administrative costs of the Centre shall be determined in accordance with the regulations issued by the Centre.
- 28.3. Unless otherwise agreed by the parties, the Board shall fix the fees of the arbitrators at a figure higher or lower than the applicable fees according to the Appendix 1 and other relevant regulations of the Centre, if the Board deems it necessary due to the exceptional circumstances of the matter.
- 28.4. At any time during the arbitral proceedings, the Tribunal may make decisions on costs, except costs that are to be fixed by the Centre and shall order payment.
- 28.5. The Tribunal shall decide in the final award the costs of the arbitration and which of the parties shall bear such costs or in which proportion such costs shall be borne by each of the parties. In making such decision, the Tribunal may take into account such circumstances as it considers relevant, including the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner.
- 28.6. Where all claims have been withdrawn or the arbitration is terminated before the file has been transferred to the Tribunal, the Centre shall determine the costs of the arbitration. Where all claims have been withdrawn or the arbitration is terminated

after the constitution of the Tribunal and before a Final Award has been rendered, the Tribunal shall determine the costs of the arbitration.

28.7. An Award may be rendered even if it deals only with costs.

RULE 29: Limitation of Liability

The arbitrators, any person appointed by the Tribunal, the Board and its members, and the Centre and its employees shall not be liable to any person for any act or omission in connection with the arbitration except to the extent that such limitation of liability is prohibited by applicable law.

RULE 30: Confidentiality

30.1. Unless otherwise agreed by the parties, a party, any arbitrator, and any person appointed by the Tribunal, including any administrative personnel and any expert, shall at all times consider all matters relating to the proceedings and the Award as confidential. Matters relating to the proceedings include the existence of the proceedings, the pleadings, evidence, and other documents and material submitted in the arbitration, but excludes any matter that is otherwise in the public domain or required by applicable law.

30.2. The Tribunal may take appropriate measures, including an order or an Award for sanctions or costs, for breach of this Rule by a party.

RULE 31: Notices and Calculation of Periods of Time

31.1. For the purpose of these Rules, any notice or communication shall be in writing.

Any such notice or communication may be delivered by hand, registered post or courier service, or transmitted by any form of electronic communication (including electronic mail and facsimile), or delivered by any other appropriate means that provide a record of its delivery.

Any notice or communication shall be deemed to have been received if it is delivered:

- (i) to the addressee personally or to its authorised representative;

- (ii) to the addressee's habitual residence, place of business, or designated address;
- (iii) to any address agreed by the parties; or
- (iv) if, after reasonable efforts, none of these can be found, then to the addressee's last-known residence or place of business by a means that provides a record of delivery or of attempted delivery.

31.2. Any notice or communication shall be deemed to have been received on the day it was delivered in accordance with Rule 31.1.

31.3. For the purpose of calculating any period of time under these Rules, such period shall begin to run on the day following the day when a notice or communication is deemed to have been received. Unless the Board of the Centre or the Tribunal determines otherwise, any period of time under these Rules is to be calculated in accordance with Sri Lanka time (GMT + 05:30).

31.4. Any non-business days at the place of receipt shall be included in calculating any period of time under these Rules. If the last day of any period of time under these Rules is not a business day at the place of receipt in accordance with Rule 31.1, the period is extended until the first business day which follows.

31.5. The parties shall file with the Centre a copy of any notice or communication concerning the arbitral proceedings.

31.6. Except as provided in these Rules, the Centre may at any time extend or abbreviate any time limits prescribed under these Rules.

31.7. All pleadings and other 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 Centre, unless otherwise agreed. A copy of any notification or communication from the Tribunal to the parties shall be sent to the Centre.

31.8. All notifications or communications from the Centre and the Tribunal shall be made to the last address of the party or its representative for whom the same are intended, as

notified either by the party in question or by the other party. Such notification or communication may be made by delivery as set out in Rule 31.1

31.9 After the notification by the Centre of the establishment of the Tribunal, all communications between the Tribunal and the parties shall take place directly between them (with simultaneous copies to the Centre).

31.10 The Tribunal shall send to the Centre a copy of each order, award or other decision that it makes.

RULE 32: Expedited Procedures

32.1. Prior to the constitution of the Tribunal, a party may file an application with the Centre for the arbitral proceedings to be conducted in accordance with the Expedited Procedure under this Rule, provided that any of the following criteria is satisfied:

- a) the amount in dispute does not exceed the equivalent amount of LKR 5,000,000, representing the aggregate of the claim, counterclaim and any defence of set-off;
- b) the parties so agree; or
- c) in cases of exceptional urgency.

The party applying for the arbitral proceedings to be conducted in accordance with the Expedited Procedure under this Rule 32.1 shall, at the same time as it files an application for the proceedings to be conducted in accordance with the Expedited Procedure with the Centre, send a copy of the application to the other party and shall notify the Centre that it has done so, specifying the mode of service employed and the date of service.

32.2 Where a party has filed an application with the Centre under Rule 32.1, and where the Board determines, after considering the views of the parties, and having regard to the circumstances of the case, that the arbitral proceedings shall be conducted in accordance with the Expedited Procedure, the following procedure shall apply:

- a) the Board may abbreviate any time limits under these Rules;

- b) the case shall be referred to a sole arbitrator, unless the Board determines otherwise;
- c) the Tribunal may, in consultation with the parties, decide if the dispute is to be decided on the basis of documentary evidence only, or if a hearing is required for the examination of any witness and expert witness as well as for any oral argument;
- d) the Award shall be made within six (6) months from the date when the Tribunal is constituted unless, in exceptional circumstances, the Board extends the time for making such Award; and
- e) the Tribunal may state the reasons upon which the Award is based in summary form, unless the parties have agreed that no reasons are to be given.

32.3 By agreeing to arbitration under these Rules, the parties agree that, where arbitral proceedings are conducted in accordance with the Expedited Procedure under this Rule 32, the rules and procedures set forth in Rule 32.2 shall apply even in cases where the arbitration agreement contains contrary terms.

32.4 Upon application by a party, and after giving the parties the opportunity to be heard, the Tribunal may, having regard to any further information as may subsequently become available, and in consultation with the Board, order that the arbitral proceedings shall no longer be conducted in accordance with the Expedited Procedure. Where the Tribunal decides to grant an application under this Rule 32.4, the arbitration shall continue to be conducted by the same Tribunal that was constituted to conduct the arbitration in accordance with the Expedited Procedure.

RULE 33: Practice Notes

The Board may from time to time introduce practice notes to supplement, regulate, and implement these Rules for the purpose of facilitating the administration of arbitrations governed by these Rules.

RULE 34: General Rule

In all matters not expressly provided for in these Rules, the Board and the Tribunal shall act in the spirit of the Rules and make every effort to ensure the fair, cost effective and expeditious conclusion of the arbitration and enforcement of the Award.

Appendix I

Schedule of Fees

(All sums are stated in Sri Lankan Rupees)

This Schedule of Fees is effective as of 1st of April 2021 and is applicable to all arbitrations commenced on or after the said date. Moreover, this Schedule of Fees is subject to revision on an annual basis as decided by the Board of the ICLP Arbitration Centre, Sri Lanka.

Case Filing Fee (Non-Refundable) – LKR 30,000 by each party.

A filing fee is applicable to all arbitrations administered by the ICLP Arbitration Centre, and to each claim or counterclaim.

** Fee does not include Taxes payable which shall be charged as per applicable laws.*

*** Expenses incurred by The ICLP Arbitration Centre on behalf of the parties will be reimbursable on an actual basis.*

Administration Fees

The administration fees calculated in accordance with the Schedule below apply to all arbitrations administered by The ICLP Arbitration Centre and is the maximum amount payable to The ICLP Arbitration Centre.

We have indicated a range of trial fees calculated on the cost in dispute. The final fee will be charged based on the work carried out during the administration of the arbitration and it will not exceed beyond the cap stated herein.

Sum in Dispute (LKR)	Administration Fees (LKR)
Whole arbitration value	
Up to 500,000	50,000
500,000 to 1,000,000	50,000 to 250,000
1,000,001 to 10,000,000	250,000 to 500,000
Above 10,000,000	1,500,000***

****Provided that the arbitration is concluded in 18 months from the date of the Request for Arbitration*

*****If the arbitration still continues after the 18 months from the date of the Request for Arbitration The ICLP Arbitration Centre will estimate a further cost at its discretion.*

The administration fees **do not** include the following:

- Fees and expenses of the Tribunal;
- Usage cost of facilities and support services for and in connection with any hearing (e.g. hearing rooms and equipment, transcription, and interpretation services); and
- The ICLP Arbitration Centre's administrative expenses;

- Taxes as may be applicable.
- The ICLP Arbitration Centre reserves the right to charge the entire amount upfront or charge the same on an installment basis.

Arbitrator's Fees

For arbitrations conducted pursuant to and administered under these Rules, the fee calculated in accordance with the Schedule below is the maximum amount payable to each arbitrator, unless the parties have agreed to an alternative method of determining the Tribunal's fees.

Sum in dispute	Fees (LKR)	Payment plan
Up to LKR 1,000,000	150,000	50% at initiation; 50% at completion
1,000,001 to 10,000,000	150,000 + 5.00% on amounts above LKR 1,000,000	50% at initiation; 50% at completion
10,000,000 to 50,000,000	600,000 + 1.00% on amounts above LKR 10,000,000	50% at initiation; 50% at completion
50,000,000 to 100,000,000	1,000,000 + 0.50% on amounts above LKR 50,000,000	25% at initiation; 75% at completion
100,000,000 to 500,000,000	1,250,000 + 0.25% on amounts above LKR 100,000,000	25% at initiation; 75% at completion
500,000,000 to 1 Bn	2,250,000 + 0.10% on amounts above LKR 500,000,000	25% at initiation; 75% at completion
Over 1 Bn	3,000,000	25% at initiation; 75% at completion

It may be noted that the fee stated above is for one arbitrator for the entire dispute, irrespective of the number of hearings.

The above Arbitrator's Fees do not include Taxes as may be applicable.

Appointment Fees (Non-Refundable)

The appointment fee is payable where a request for appointment of arbitrator(s) is made in an ad hoc case. The fee is payable by the party requesting the appointment. A request for appointment must be accompanied by payment of the appointment fee prescribed below.

1 arbitrator	2 arbitrators	3 arbitrators
LKR 25,000	LKR 45,000	LKR 60,000

Challenge Fee (Non-Refundable)

A party submitting a notice of challenge shall make payment of LKR 100,000 as a challenge fee.

Authentication Charges

The ICLP Arbitration Centre's charges for the authentication of arbitration awards made in Sri Lanka:

Awards Issued by The ICLP Arbitration Centre (maximum amount payable as follows)

Authentication Fee	LKR 10,000 (for each authenticated copy)
Incidentals	LKR 5000
Total	LKR 15,000 (Does not include Taxes as may be applicable)

Other Awards

Authentication Fee	LKR 20,000 (LKR 20,000 for each additional authenticated copy)
Incidentals	LKR 7,500
Total	LKR 27,500. (Does not include Taxes as may be applicable)

Payment Information

Payments may be made by a local cheque payable to "The ICLP Arbitration Centre" and should be sent directly to The ICLP Arbitration Centre at No 53/1, Ananda Coomaraswamy Mawatha, Colombo 07, or by bank transfer to the bank account provided by the Centre.