



**BIAC Arbitration Rules 2019
BIAC Arbitrators' Code of Conduct**

Bangladesh International Arbitration Centre (BIAC)

The Institution for Alternative Dispute Resolution

**BANGLADESH INTERNATIONAL ARBITRATION CENTRE
(BIAC)**

ARBITRATION RULES 2019

In Supersession of BIAC Arbitration Rules 2011

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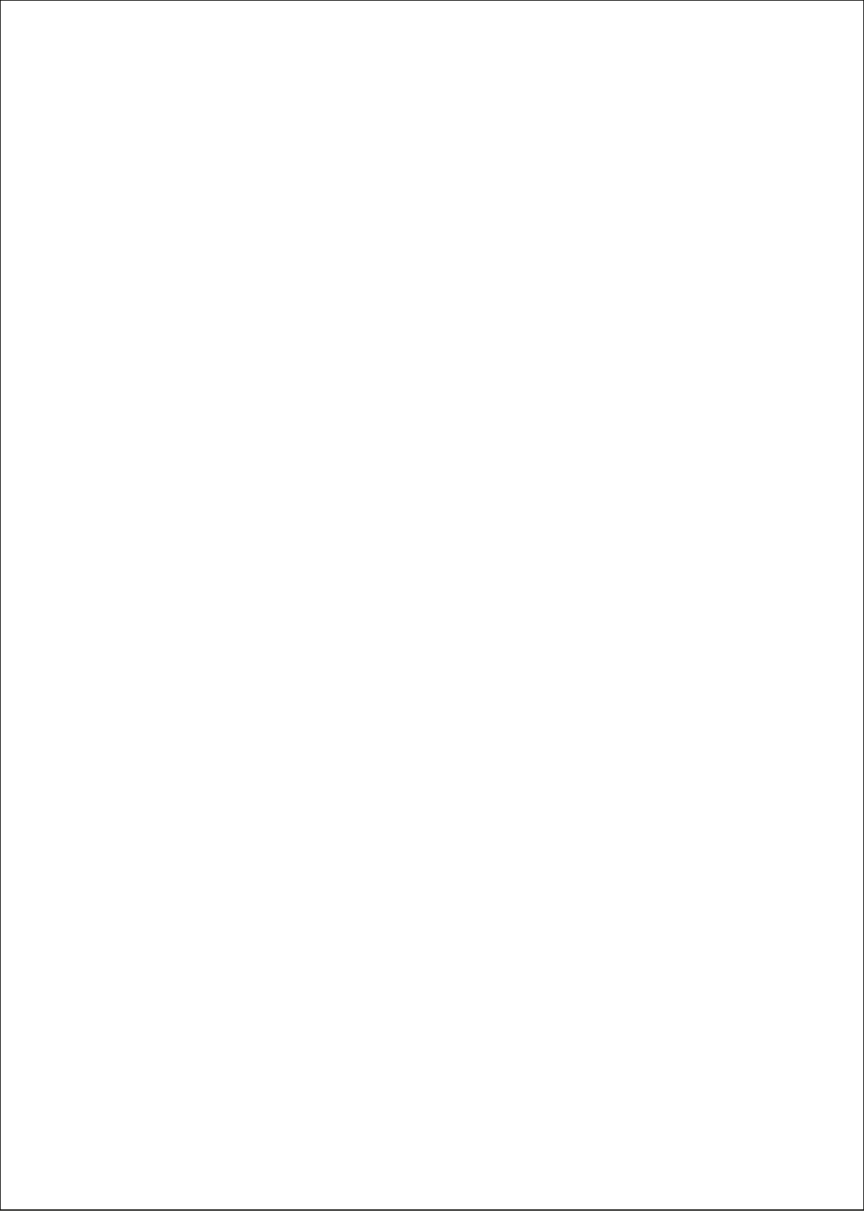
Suggested BIAC Clauses

Med-Arb Clause

“Any dispute or difference arising out of or in connection with this contract shall first be referred to the Bangladesh International Arbitration Centre (BIAC) for settlement through mediation in accordance with BIAC Mediation Rules. If a settlement cannot be reached within sixty (60) days following the appointment of Mediator(s) then such dispute or difference shall be referred to BIAC within sixty (60) days to be finally settled under the Rules of Arbitration of the Bangladesh International Arbitration Centre, by one or more arbitrators appointed in accordance with the said Rules.”

BIAC Arbitration Clause

“All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the Bangladesh International Arbitration Centre by one or more arbitrators appointed in accordance with the said Rules. Unless otherwise agreed by the parties, the laws of Bangladesh shall apply and the seat of arbitration shall be Dhaka.”



1. Short Title and Scope

- (1) These Rules shall be called the BIAC Arbitration Rules 2019. These Rules provide for the settlement, by arbitration, of business disputes.
- (2) These Rules shall apply where the parties have agreed in writing that the arbitration shall be administered by the BIAC in accordance with these Rules. The version of the Rules in effect on the date of the filing of the Request for Arbitration shall apply to the arbitration, unless otherwise agreed by the parties.
- (3) These Rules shall govern the arbitration except that where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

2. Definitions

In these Rules, unless the context otherwise requires,

- (1) “Award” means a decision of the Arbitration Tribunal on the substance of the dispute and includes an interim, partial and/or final award.
- (2) “Arbitration Tribunal” means all arbitrators who have been appointed in relation to the arbitration and includes one or more arbitrators.
- (3) “Arbitration Committee” means the BIAC Arbitration Committee constituted pursuant to the Constitution of the BIAC Arbitration Committee, as adopted by the BIAC.
- (4) “BIAC” means the Bangladesh International Arbitration Centre and includes any of its regional offices.
- (5) “Claimant” means one or more claimants.
- (6) “Respondent” means one or more respondents.

- (7) "Panel of Arbitrators" means the list of arbitrators, as approved by the Board
- (8) "Directory of Arbitrators" means the list of arbitrators, qualified as per the criteria approved by the Board.
- (9) "Rules" means the BIAC Arbitration Rules 2019.
- (10) "Request for Arbitration" means notice of arbitration under the Rules.
- (11) "Court" means any court with jurisdiction in relation to arbitration proceedings.
- (12) "Secretary General" means the Chief Executive Officer of BIAC.
- (13) "Seat" means the jurisdiction under which the arbitration is being held.
- (14) "Place" means the venue at which the arbitration proceeding takes place.
- (15) "International Commercial Arbitration" means where at least one of the parties is an individual who is a national of or habitually resident in any country other than Bangladesh or a body corporate which is incorporated in any country other than Bangladesh, or a company or an association or a body of individuals whose central management and control is exercised in any country other than Bangladesh, or the Government of a foreign country.

3. Request for Arbitration

- (1) A party initiating the arbitration ("Claimant") shall file a copy of Request for Arbitration to the other party ("Respondent") with the BIAC.
- (2) The arbitral proceedings shall be deemed to commence on the date on which the Request for Arbitration is received by the BIAC. The Secretary General shall notify the Respondent of the

request for arbitration.

(3) A Request for Arbitration shall include the following:

- (a) a request that the dispute be referred to arbitration;
- (b) the name (s), address(es), telephone number(s), fax number(s) and email address(es) (if known) of the parties to the dispute and their representative(s) (if known);
- (c) a reference to the contract out of or in relation to which the dispute to be submitted to arbitration has arisen;
- (d) a reference to the arbitration agreement relied upon;
- (e) a brief statement in relation to the general nature of the claim, including the relief claimed and where possible, the amount of the claim;
- (f) the preferred number of arbitrators, if not already provided for in the arbitration agreement;
- (g) any comments regarding the place of arbitration;
- (h) any comments regarding the law applicable to the merits of the dispute;
- (i) any comments regarding the language(s) of the arbitration;
- (j) unless the parties have otherwise agreed, the nomination of an arbitrator in the event that the arbitration agreement provides for more than one arbitrator or a proposal for a sole arbitrator in the event that the arbitration agreement provides for a sole arbitrator or request BIAC to select and appoint the arbitrator.
- (k) a request that the other party nominates its arbitrator or agree to BIAC's appointing authority;
- (l) payment of the requisite Registration Fee as stated in Annex 1/Annex 2 (as applicable).

4. Response to the Request for Arbitration

- (1) The Respondent shall send to the BIAC and to the Claimant a Response to the Request for Arbitration within 30 days of the receipt of the Request for Arbitration from the BIAC or within such period as may be specified by the BIAC. During this period the Respondent may visit BIAC for a pre-assessment to understand the process/regarding any questions.
- (2) The Response shall contain:
 - (a) a brief response to the claim, the relief claimed and, if applicable, the amount of the claim;
 - (b) a brief statement in relation to any counterclaim, specifying the relief claimed and, where possible, the amount of the counterclaim;
 - (c) unless the parties have agreed otherwise, the nomination of an arbitrator if the arbitration agreement provides for more than one arbitrator or, if the arbitration agreement provides for a sole arbitrator, agreement with Claimant's proposal for a sole arbitrator or a counter-proposal, or proposal for number of arbitrators if the agreement is silent or agree to BIAC's appointing authority;
 - (d) the payment of the requisite Registration Fee for any counterclaim as stated in Annex 1/Annex 2 (as applicable).
- (3) If the Respondent fails to respond in accordance with Rule 4 (1) and (2) above, the BIAC shall proceed in accordance with these Rules.
- (4) Any counterclaims(s) made by the Respondent shall be filed with its Answer and shall provide:
 - (a) a description of the nature and circumstances of the dispute giving rise to the counterclaim(s); and,
 - (b) a statement of the relief sought, including, to the extent

possible, an indication of any amount(s) counterclaimed.

- (5) The Claimant shall file a reply to any counterclaim within 30 days from the date of receipt of the counterclaim(s) communicated by the Secretariat.

5. Notice and Periods of Time

- (1) All notices and communications from any party or arbitrator to the BIAC under these Rules shall be addressed to the Secretary General.
- (2) Any notice or other communication that may be or is required to be given by a party under these Rules shall be in writing and shall be delivered by registered post or courier service or transmitted by facsimile, e-mail or any other means of telecommunication that provides a record of its transmission.
- (3) A party's last-known residence or place of business during the arbitration shall be considered a valid address for the purpose of any notice or other communication in the absence of any notification of a change to such address by that party to the other party or parties, the Arbitration Tribunal and the Secretary General.
- (4) The notice or other communication shall be treated as having been received on the day it is delivered or, in the case of telecommunications, transmitted in accordance with sub-rule (2) of Rule 5.
- (5) For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day when a notice or other communication is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period shall be extended until the first business day that follows. Official holidays or non-business days occurring during the running of the period of time shall be included in calculating that period.

6. Number of Arbitrators

Where the arbitration agreement is silent, and the parties have not been able to reach agreement on the number of arbitrators, the arbitration shall proceed before a sole arbitrator appointed by the Arbitration Committee, unless the Committee considers that a tribunal composed of three arbitrators would be more appropriate.

7. Appointment of Arbitrators

- (1) Where the arbitration agreement provides for three arbitrators, each party shall nominate one arbitrator, and the two party-nominated arbitrators shall appoint the third arbitrator, who shall serve as the presiding arbitrator. The parties may request BIAC's assistance in selecting and appointing the arbitrators.
- (2) The Arbitration Committee shall appoint:
 - (a) an arbitrator if a party fails to nominate an arbitrator within 30 days from the receipt of a request to do so from the other party; or
 - (b) the presiding arbitrator if the nominated arbitrators fail to agree on the presiding arbitrator within 30 days from the date of their appointment,
- (3) Where the arbitration agreement provides for a sole arbitrator, and the parties fail to agree on the arbitrator within 30 days from the receipt of a request by one party to do so, the appointment shall be made, by the Arbitration Committee or by BIAC if the parties so request.
- (4) For appointment of an arbitrator under sub-rule (2) of Rule 7, the following procedure shall be followed:
 - (a) the Arbitration Committee, through the Secretary General, shall communicate to the parties, a list containing the names, addresses, nationalities and a description of qualifications and experience of at least three individuals from the Panel of Arbitrators and/or Directory of Arbitrators ;

- (b) within 10 days following the receipt of the list, a party may delete any name to which he objects and return the list to the Secretary General;
 - (c) on receipt of the list returned by the party/parties, the Arbitration Committee, shall appoint the arbitrator from the list;
 - (d) if for any reason the appointment cannot be made according to the procedure specified in (a) to (c), the Arbitration Committee shall appoint from the Panel of Arbitrators and/or Directory of Arbitrators excluding the persons whose names are deleted under Sub-Rule (4) (b) above.
 - (e) In appointing an arbitrator, the Arbitration Committee/BIAC shall consider the nature of the dispute in order to include in the list, persons having appropriate professional or business experience, language, ability and nationality.
- (5) The Arbitration Committee/BIAC shall:
- (a) make the appointment as promptly as possible having regard to:
 - (i) any qualifications required of the arbitrator by the agreement of the parties;
 - (ii) such considerations as are likely to secure the appointment of an independent and impartial arbitrator;
 - (iii) availability of the arbitrator for prompt and efficient determination of the dispute; and
 - (iv) in case of appointment of a sole or presiding arbitrator in an international commercial arbitration, may take into account the advisability of appointing an arbitrator of a nationality other than those of the parties. However, nationality of an arbitrator on its own cannot be a ground for disqualification.
 - (b) inform the parties, through the Secretary General, promptly in writing of the appointment;

- (6) A decision by the Arbitration Committee or BIAC with respect to the appointment of an arbitrator shall be treated as final and binding on the parties.
- (7) An arbitrator if required to be substituted/replaced will be appointed in the same manner in which his/her predecessor had been appointed.
- (8) Unless otherwise agreed by the parties, a person of any nationality may be appointed as an arbitrator subject to Sub-Rule (5) (a) above.
- (9) Before appointing a person as arbitrator or the presiding arbitrator, the Arbitration Committee or BIAC shall always obtain a declaration in writing from such person that:
 - (a) no circumstances exist that give rise to justifiable doubts as to his/her independence or impartiality,
 - (b) the arbitrator has sufficient availability to determine the case in a prompt and efficient manner; and
 - (c) he possesses the necessary qualifications to decide the dispute for which he is being appointed.
- (10) An arbitrator shall disclose as soon as possible to the parties and the Secretary General any circumstance that may occur during the course of arbitration giving rise to justifiable doubts as to his/her impartiality or independence.
- (11) Both BIAC Panel / Directory of Arbitrators and the Arbitrators who are selected by parties but not on the Panel/ Directory of Arbitrators have to agree in writing, to observe the BIAC Arbitration Rules 2019, as well as the BIAC Code of Conduct for Arbitrators.

8. Multi-party Appointments of Arbitrator(s)

- (1) Where there are more than two parties to the arbitration, and three arbitrators are to be appointed, the claimant(s) shall jointly

nominate one arbitrator and the respondent(s) shall jointly nominate one arbitrator and the two arbitrators so appointed shall nominate the third arbitrator who shall act as the presiding arbitrator. In the event that such joint nominations have not been made within 28 days from the filing of the request for arbitration or within the period agreed by the parties, the Arbitration Committee or BIAC at the request of the parties shall appoint all three arbitrators and designate one of them to act as the presiding arbitrator.

- (2) Where there are more than two parties to the arbitration, and a sole arbitrator is to be appointed, all parties are to agree on the sole arbitrator. In the event that such agreement cannot be reached within 30 days of the filing of the request for arbitration or within the period agreed by the parties, the Arbitration Committee or BIAC at the request of the parties shall appoint the sole arbitrator.

9. Challenge of Arbitrators

- (1) A party may challenge the appointment of an arbitrator or the presiding arbitrator only if:
 - (a) circumstances exist that give rise to justifiable doubts as to his/her independence or impartiality, or
 - (b) s/he does not possess the qualifications agreed to by the parties in the agreement to arbitration.
- (2) A party may only challenge an arbitrator appointed by him for reasons of which he becomes aware after the appointment has been made.

10. Challenge Procedure

- (1) A party who intends to challenge an arbitrator shall, within 14 days of being notified of the arbitrator's appointment or becoming aware of any ground referred to in Rule 9(1), send a written notice stating the reasons for the challenge to the BIAC,

Arbitration Tribunal, the arbitrator who is being challenged and the parties to the arbitration.

- (2) The other party may agree to the challenge when an arbitrator is challenged by one party. The challenged arbitrator may withdraw from his office. In neither case, does this imply acceptance of the validity of the grounds for the challenge.
- (3) In case the party agrees or the challenged arbitrator withdraws from office, a substitute arbitrator shall be appointed in accordance with Rule 7.
- (4) If, within 7 days of receipt of the notice of challenge, the other party does not agree to the challenge or the arbitrator does not withdraw voluntarily, the Arbitration Committee shall decide on the challenge. The Arbitration Committee/BIAC may offer the challenged arbitrator an opportunity to respond in writing to the challenge, if the latter so wishes. If the challenge is not successful, the Arbitration Tribunal shall continue with the arbitral proceedings and make the Award. If the challenge is successful, a substitute arbitrator shall be appointed in accordance with Rule 7.
- (5) The Arbitration Committee's/BIAC's decision with respect to a challenge application shall be treated as final and binding.

11. Failure or Impossibility to act

- (1) The mandate of an arbitrator shall terminate if-
 - (a) he/she withdraws from his/her office or all the parties agree to termination of his/her mandate; or
 - (b) he/ she dies; or
 - (c) he/she becomes unable to perform his/her functions or for other reasons fail to act without undue delay.
- (2) Where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed in the same manner in which his/her predecessor had been appointed.

- (3) Where an arbitrator is replaced under sub-rule (1) of Rule 11, any hearing previously held may be repeated only if it is considered essential by the Arbitration Tribunal. In the case of sole arbitrator, the hearings may also be repeated only if it is considered essential by the new arbitrator.
- (4) Any order of the Arbitration Tribunal made prior to the replacement of an arbitrator shall not be invalid solely because there has been a change in the composition of the Arbitration Tribunal.

12. Statement of Claim and Statement of Defence

- (1) Within 30 days of the constitution of the Arbitration Tribunal, the claimant shall send to the BIAC, the Arbitration Tribunal and to the Respondent a statement of claim clearly stating all relevant facts supporting the claim, the points at issue, related legal arguments and the relief and/or remedy sought.
- (2) The Respondent shall, within 30 days following receipt of the statement of claim, send to the BIAC, the Arbitration Tribunal and the Claimant a statement of defence setting out all relevant facts in respect of the defence, any counterclaim, related legal arguments, the points at issue and the relief and/or remedy sought.
- (3) Within 14 days of the receipt of the statement of defence and any counterclaim, the claimant shall send to the BIAC, the Arbitration Tribunal and the Respondent a rejoinder to the statement of defence and a statement of defence to the counterclaim (if any).
- (4) Within 14 days of the receipt of the statement of defence to the counterclaim, the Respondent shall send to the BIAC, the Arbitration Tribunal and the Claimant the rejoinder to the said statement.
- (5) The parties shall submit with their written statements, copies of all supporting documents upon which they intend to rely. All statements and documents must be verified by the parties themselves and their counsel (if any).

- (6) A party may amend or supplement statements of claim, counterclaim or defence during the course of the arbitral proceedings with the permission from the Arbitration Tribunal.
- (7) If the Claimant fails within the time specified to submit its statement of claim, the Arbitration Tribunal may issue an order for the termination of the proceedings and/or give such other orders as it may consider appropriate.
- (8) If the Respondent fails to submit a statement of defence, or if at any point any party fails to avail itself of the opportunity to present its case in the manner directed by the Arbitration Tribunal, the Arbitration Tribunal may proceed with the arbitration.
- (9) If the Arbitration Tribunal deems it necessary, it may extend the periods or time limits referred to above; keeping in view that the arbitration process must be concluded in 388 days and 3 months in case of Fast Track Arbitration.

13. Hearings and Written Proceedings

- (1) The Arbitration Tribunal shall hold a preliminary conference in person or by teleconference at the earliest possible opportunity, and in any event, no later than 21 days following the constitution of the Arbitration Tribunal. The purpose of the preliminary conference shall be:
 - (a) to discuss with the parties the procedure including, but not limited to, issues in relation to the provisional timetable, exchange of information, length of hearings, hearing venue, timing for submission of witness statements and expert reports and any other issues the Arbitration Tribunal considers appropriate;
 - (b) to fix dates for oral hearings; and/or
 - (c) to determine any other matter required or permitted under these Rules to facilitate the efficient progress of the arbitral proceedings.
- (2) The Arbitration Tribunal shall decide whether to hold oral

hearings for the presentation of evidence and/or for oral arguments, or whether the proceedings shall be conducted on the basis of documents only. All hearings shall be private and remain confidential. If a party fails to appear at a hearing without showing sufficient cause, the Arbitration Tribunal may proceed with the arbitration and may make the Award based on the submissions and evidence before it.

- (3) The Arbitration Tribunal may, in advance of any hearing, submit to the parties a list of issues which it considers as relevant to the case and material to its outcome and/or to which a preliminary determination may be appropriate.
- (4) The Arbitration Tribunal shall commence the oral hearings within 30 days from the submission of the written pleadings by both the parties and conclude the hearing within 180 days from the date of the first hearing. Any party seeking extension must pay the registration fee as per Annex 1/ Annex 2 (as applicable).
- (5) The parties shall be given not less than five working days notice of any hearing and of any meeting of the Arbitration Tribunal for the purposes of inspection of documents, goods or other property.
- (6) If a party intends to give evidence through a witness, it shall, within the time determined by the Arbitration Tribunal, communicate to the Arbitration Tribunal and to the other party-
 - (a) the names and addresses of the witnesses he intends to present, and
 - (b) the subject upon which, and the language in which, those witnesses will give their testimony.
- (7) The Arbitration Tribunal shall make arrangements for the translation of oral statements made at a hearing and for a record of the hearing if-
 - (a) either is deemed necessary by the Arbitration Tribunal under the circumstances of the case, or

- (b) the parties have agreed to it and have communicated such agreement to the Arbitration Tribunal at least 14 days before the hearing.

14. Evidence

- (1) Unless otherwise agreed by the parties-
 - (a) evidence may be given before the Arbitration Tribunal orally or in writing or by affidavit,
 - (b) the Arbitration Tribunal may administer an oath or affirmation to a witness subject to his consent.
- (2) Each party shall have the burden of proving the facts relied on to support its claim or defense. Parties shall have a full and equal opportunity (subject to compliance with the Tribunal's instructions) to present relevant and reliable evidence and oral and written arguments in support of their propositions.
- (3) The Arbitration Tribunal shall determine the admissibility, relevance and weight of evidence and shall not be bound by formal rules of evidence applicable in Court.

15. Witnesses

- (1) The Arbitration Tribunal may at any time require any party to give notice of the identity of witnesses he intends to call and a short summary of the subject matter of their testimony and its relevance to the issues. The Arbitration Tribunal may also require the exchange of witness' statements and of expert reports.
- (2) At least fifteen (15) days before the hearings, each party shall give the Arbitration Tribunal, BIAC and the other parties, the names and addresses of witnesses it intends to present, the subject of their testimony and the languages in which such witnesses will give their testimony.
- (3) The Arbitration Tribunal has discretion to allow, limit, or refuse to allow the appearance of witnesses, whether witnesses of fact or expert witnesses.

- (4) Any witness who gives oral evidence may be questioned by each party or its representative, under the control of Arbitration Tribunal, and may be required by the Arbitration Tribunal to testify under oath or affirmation. The Arbitration Tribunal may question the witnesses at any stage of the examination.
- (5) The testimony of witnesses may be presented in written form, either as signed statements or by duly sworn affidavits, and the Arbitration Tribunal may order that such statements or affidavits shall stand as evidence-in-chief.
- (6) If a witness or expert witness fails to appear before the Arbitration Tribunal to give evidence, in spite of such a request by any parties or by the Arbitration Tribunal, the Arbitral Tribunal or any such party with the approval of the Arbitration Tribunal may apply to the Court for assistance in taking evidence.

16. Appointment of Experts by the Arbitration Tribunal

- (1) The Arbitration Tribunal may-
 - (a) appoint one or more independent experts to report to it on specific issues to be determined by the Arbitration Tribunal, and communicate to the parties, and
 - (b) require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for inspection.
- (2) If a party so requests or if the Arbitration Tribunal considers it necessary, the expert shall, attend the oral hearing after delivery of the report, participate in an oral hearing where the parties shall have the opportunity to put questions to the expert.
- (3) The expert shall, on the request of a party, make available to that party for examination all documents, goods or other property in the possession of the expert based on which the report was prepared.
- (4) In relation to any evidence taking, the provision contained in Rule

14 shall be followed, unless otherwise decided by the Arbitration Tribunal.

- (5) The fees and expenses of any expert appointed by the Arbitration Tribunal under this Rule shall be paid out of the deposits payable by the parties under Rule 26 and shall form part of the costs of the arbitration.

17. Place of Arbitration

- (1) The parties may agree in writing the seat of their arbitration. In the absence of such an agreement, the seat of arbitration shall be Dhaka.
- (2) The Arbitration Tribunal may hold hearings, meetings and deliberations at any convenient place at its discretion. Despite holding hearings and/or meetings in other places, the arbitration shall be treated as arbitration conducted at the seat of the arbitration and any award as an award made at the seat of the arbitration.

18. Ex-parte communications with Arbitrators

Unless otherwise required by the Arbitration Tribunal, parties may not communicate with members of the Arbitration Tribunal outside the presence of all parties.

19. Language

- (1) Where the arbitration agreement does not provide for the language to be used in the arbitral proceedings, the official language of the arbitration shall be English.
- (2) The Arbitration Tribunal may order that any documentary evidence shall be accompanied by a translation into the language agreed upon by the parties or determined by the Arbitration Tribunal.

20. Representation and Assistance

- (1) Each party shall advise, in writing, the other party, the BIAC and

the Arbitration Tribunal of:

- (a) the names and addresses of persons who will represent or assist him, and
 - (b) the capacity in which those persons will act;
 - (c) any changes in (a) and (b) above.
- (2) Each party shall provide:
- (a) Proof of authorization of persons that will represent him;
 - (b) Proof of authority to file the arbitration.

21. Competence of Arbitration Tribunal to rule on its Jurisdiction

- (1) The Arbitration Tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement, and for that purpose:
- (a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and
 - (b) a decision by the Arbitration Tribunal that the contract is null and void shall not entail (by operation of law) the invalidity of the arbitration agreement
- (2) A plea that the Arbitration Tribunal does not have jurisdiction shall be raised no later than the submission of the Statement of Defence. A party shall not be precluded from raising such plea merely because he has appointed, or participated in the appointment of an arbitrator.

22. Interim measures ordered by Arbitration Tribunal

- (1) The Arbitration Tribunal may, at the request of a party, order a party to take any interim measure of protection in respect of the subject-matter of the dispute as it may consider necessary.

- (2) The Arbitration Tribunal may require a party to provide appropriate security in connection with a measure ordered under sub-rule (1). The Arbitration Tribunal shall have the discretion to draw the appropriate adverse inferences in the event of a party's non-compliance with the Tribunal's order.
- (3) The powers of the Arbitration Tribunal under this rule shall not prejudice any party's right to apply to any national court or other judicial authority for interim measures. The application of a party to a judicial authority for such measures or for the implementation of any such measures ordered by an arbitral tribunal shall not be deemed an infringement or waiver of the agreement to arbitrate and shall not affect the relevant powers reserved to the Tribunal.

23. Applicable Law

- (1) The Arbitration Tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute, failing which, the Arbitration Tribunal shall apply the law which it determines to be appropriate.
- (2) Arbitration Tribunal shall decide as amiable compositeur (according to law and legal principles) and/or ex aequo et bono (being equitable and bona fide) only if the parties have expressly authorized the Arbitration Tribunal to do so.
- (3) In all cases, the Arbitration Tribunal shall decide in accordance with the terms of the contract, if any, and shall take into account any usage of trade applicable to the transaction.

24. Award

- (1) An Award shall be made in writing and shall be signed by the members of the Arbitration Tribunal. Unless exceptional circumstances exist, the Arbitration Tribunal shall render the Award within 60 days of concluding the oral hearings.
- (2) The Arbitration Tribunal shall decide by a majority (except in the case of Sole Arbitrator) failing an agreement decision, the

presiding arbitrator alone shall make the Award for the Arbitration Tribunal which shall be binding on the parties.

- (3) If any arbitrator having been given a reasonable opportunity to do so, fails to cooperate in the making of the Award the remaining arbitrators shall proceed in his absence.
- (4) For the purposes of sub-rule (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the Arbitration Tribunal shall be sufficient so long as the reason for any omitted signature is stated.
- (5) The Award shall state the reasons upon which it is based, unless:
 - (a) the parties have agreed that no reason are to be given, or
 - (b) the Award is an award recording the agreed terms of the settlement.
- (6) The Arbitration Tribunal shall state the date and place of arbitration and the Award shall be deemed to have been made at that place.
- (7) The Arbitration Tribunal shall deposit the original award, together with record of the arbitration proceedings, with the BIAC, who shall transmit certified copies to the parties upon the full settlement of the costs of arbitration.
- (8) The Arbitration Tribunal may, at any time during the arbitral proceedings at the request of one or both the parties make an interim Award on any matter with respect to which it may make a final award.
- (9) In the event of a settlement, the parties may request the Arbitration Tribunal to render an Award recording the settlement. The parties confirm to BIAC that a settlement has been reached and that the parties do not require an award to be rendered, the arbitration proceedings shall be deemed concluded upon payment of any outstanding costs of arbitration.

- (10) The parties to the arbitration shall carry out the Award, which is final and binding on the parties, immediately and without delay.
- (11) The Arbitration Tribunal may award simple or compound interest on any sum which is the subject of the arbitration at such rates and for such periods as the Arbitration Tribunal deems fit.

25. Correction, Interpretation of Award and Additional Award

- (1) Within 14 days from the receipt of the Award:
 - (a) a party, with notice to the other party, may request the Arbitration Tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the Award; and/or
 - (b) a party, with notice to the other party, may request the Arbitration Tribunal to give an interpretation of a specific point in the Award.
- (2) If the Arbitration Tribunal considers the request made under sub-rule (1) to be justified, it shall make the correction and/or give the interpretation within 14 days from the receipt of the request and the interpretation shall form part of the Award.
- (3) The Arbitration Tribunal may correct any error of the type referred to above, on its own initiative, within 14 days from the date of the Award.
- (4) A party, with notice to the other party, may request, within 14 days from the receipt of the Award, the Arbitration Tribunal to make an additional Award as to claims presented in the arbitral proceedings but omitted from the Award. If the Arbitration Tribunal considers the request to be justified, it shall make the additional Award within 14 days from the receipt of such request.
- (5) The Arbitration Tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional Award.

26. Costs

- (1) The costs of arbitration shall be fixed by the Arbitration Tribunal and stated in the Award.
- (2) The Arbitration Tribunal shall determine which party shall bear the costs taking into account the circumstances of the case and may apportion the costs between the parties as it deems fit.
- (3) Under these Rules, "costs" mean costs relating to-
 - (a) the fees and expenses of the arbitrators and witnesses,
 - (b) legal fees and expenses,
 - (c) the administrative fees and charges of the BIAC, and
 - (d) any other expenses incurred in connection with the arbitral proceedings and the Award.
- (4) The fees and charges to be included in the costs shall be as specified in Annex-1/Annex-2.

27. Deposits

- (1) The Arbitration Tribunal shall, upon its constitution, direct each party to deposit with the BIAC an equal amount as an advance for the costs referred to in Rule 26, which it expects to be incurred.
- (2) During the arbitration proceedings, the Arbitration Tribunal may, in consultation with the BIAC, direct supplementary deposits with the BIAC in an equal amount from each party for the costs referred to above.
- (3) If the required deposits are not made in full in respect of the claim or counterclaim within 14 days of notifying the parties, the Arbitration Tribunal shall remind the parties in order that one or the other party may make the required deposit and if the required deposit is still not made within 7 days, the Arbitration

proceedings shall continue ex-parte against the party failing to make the required deposit; provided that the other parties to the arbitration proceedings shall make the required deposit of the defaulting party; further provided that the award shall order the defaulting party to reimburse the other party the amount so paid.

- (4) The BIAC shall hold all deposits required under these Rules. The BIAC may, from time to time, pay to the Arbitration Tribunal from any deposit it holds under these Rules, any amount it considers reasonable and appropriate for fees earned or expenses incurred by the Arbitration Tribunal in the arbitral proceedings. The BIAC shall also notify the parties accordingly.
- (5) Upon termination of the arbitral proceedings, the BIAC shall, in accordance with the final award, apply any deposit it holds towards any of the unpaid administrative fees of the BIAC and the costs of the proceedings. The BIAC shall account to the parties for the deposits received and applied, and return any balance to the parties.

28. Fast Track Arbitration

- (1) Where the amount in dispute, including the claim, counterclaim and defense, does not exceed Taka 50 million (or equivalent), any party may request BIAC in writing before the preliminary conference that the arbitration be treated as a fast track arbitration.
- (2) Any decision in this respect shall be taken by BIAC and shall be notified to the Arbitration Tribunal and the parties before the preliminary conference.
- (3) If the arbitration is decided to be treated as a fast track arbitration, the BIAC shall shorten the time limits under these Rules in a manner that the arbitration award shall be made within 3 months from the date when the Arbitration Tribunal is constituted unless, in exceptional circumstances, the Arbitration Tribunal extends the time.

- (4) The fees and expenses for fast track arbitration under these Rules are stated in Annex-2.
- (5) All details of the process including dates of submissions, oral hearings, mode of correspondence, etc and any query the parties may have, in other words matters of the procedural order, shall be decided at the preliminary conference. The preliminary conference shall be held within 10 days from the date of the constitution of the Tribunal. If consensus cannot be reached on any issue or any party fails to comply with the procedural order, the Tribunal (in case of Sole Arbitrator) and the Presiding Arbitrator (in case of a three member Tribunal) shall decide.

29. Exclusion of liability

- (1) The BIAC including its directors, officers, employees or any arbitrator shall not be liable to any person for negligence, act or omission in connection with any arbitration governed by these Rules.
- (2) The BIAC including its directors, officers, employees or any arbitrator shall not be under any obligation to make any statement in connection with any arbitration governed by these Rules. No party shall seek to make any director, officer, employee or arbitrator act as a witness in any legal proceedings in connection with any arbitration governed by these Rules.

30. Confidentiality

- (1) The parties and the Tribunal shall at all times treat all matters relating to the proceedings and the award as confidential.
- (2) A party or any arbitrator shall not, without the prior written consent of all the parties, disclose to third party any such matter except:
 - (a) for the purpose of making an application to any competent court of any State to enforce or challenge the award;
 - (b) pursuant to the order of or a subpoena (order to be present in court) issued by a court of competent jurisdiction;

- (c) for the purpose of pursuing or enforcing a legal right or claim;
 - (d) in compliance with the provisions of the laws of any State which are binding on the party making the disclosure;
 - (e) in compliance with the request or requirement of any regulatory body or other authority; or
 - (f) pursuant to an order by the Tribunal on application by a party with proper notice to the other parties.
- (3) In this Rule, “matters relating to the proceedings” means the existence of the proceedings, and the pleadings, evidence and other materials in the arbitration proceedings and all other documents produced by another party in the proceedings or the award arising from the proceedings, but excludes any matter that is otherwise in the public domain.
- (4) The Tribunal has the power to take appropriate measures, including issuing an order or award for sanctions or costs, if a party breaches the provisions of this Rule.

31. Interpretation

- (a) The interpretation of any provision in these Rules shall be made by BIAC.
- (b) These Rules may be amended or modified by BIAC at any time without notice.

BIAC Arbitrators' Code of Conduct

The BIAC Arbitrators' Code of Conduct ("the Code") provides the guiding principles for the Arbitrators of BIAC's Panel and Directory of Arbitrators in Arbitration administered by BIAC or for the Arbitrators who conducted Arbitration as per provisions of BIAC Arbitration Rules.

It sets the standards for protection of interests of parties using Arbitration services at BIAC, and for enhancement of confidence in BIAC's Arbitration services as neutral, impartial, efficient, expeditious and independent alternative dispute resolution method.

1. General principles

The Arbitrator shall:

(a) acknowledge that Arbitration is based on principles of self-determination by the parties-

The Arbitration process relies upon the ability of parties to reach a voluntary agreement to resolve their dispute. Arbitrator will encourage the parties to make their own choices and bear the responsibility thereof. The Arbitrator shall not advise any party to adopt any specific course on any issue at dispute, nor shall he express any opinion on such matters. If necessary, an Arbitrator may inform the parties about the option of consulting advisers or experts during Arbitration.

(b) act in an independent, neutral and impartial way-

The Arbitrator's independence, neutrality and impartiality are central to the Arbitration process. An Arbitrator who has an interest in the Arbitration should not accept his appointment or withdraw, if appointed. The quality of the Arbitration process is enhanced when the parties have confidence in the impartiality, independence and neutrality of the Arbitrator. An Arbitrator shall disclose any interest or relationship likely to affect independence, neutrality or impartiality or which may be considered as a sign of bias.

(c) cause enquiry into and disclose conflict of interest, if any-

- (i) When approached with a proposal for an appointment, a prospective Arbitrator shall conduct reasonable enquiries with regard to conflict of interest, including close personal or business relationships, from her/his appointment that may affect her/his impartiality and independence.
- (ii) After accepting appointment, and until the Arbitration process ends, Arbitrators will not enter into financial, business, professional, family or social relationships or acquire financial or personal interests that are likely to affect or might reasonably create the appearance of conflict of interest, partiality or bias, without making a prior disclosure to all the parties and gaining their consent.

(d) possess necessary qualifications, experience and training to arbitrate-

Parties should be satisfied with the Arbitrator's competence to arbitrate the dispute. An Arbitrator while communicating with parties shall be truthful regarding his qualification, experience, training, skill and competence. He shall not give any assurance regarding the outcome of any Arbitration.

(e) maintain confidentiality in Arbitration process-

- (i) An Arbitrator shall maintain confidentiality during Arbitration proceedings, and even after termination of Arbitration. Any information, including verbal and written exchanges, obtained during Arbitration shall not be disclosed outside of the Arbitration, during or after the termination of the Arbitration, unless the parties have authorized such disclosure in writing. A few exceptions to Arbitrators' duty of confidentiality are listed at Rule 30 (2) of BIAC Arbitration Rules.
- (ii) An Arbitrator is in a relationship of trust with the parties and must not, at any time, use confidential information acquired during the course of proceedings to gain personal advantage for himself or others, or to affect adversely the interest of another.

(f) conduct the Arbitration fairly, in a manner consistent with the BIAC Rules of Arbitration and with due diligence-

The Arbitrator will not carry on any activity or conduct himself in a manner unbecoming of an Arbitrator. He will uphold the integrity and fairness of the Arbitration process; ensure that the parties involved in the Arbitration are fairly informed and have an adequate understanding of the procedural aspects of the process; avoid, while communicating with the parties, any impropriety or appearance of impropriety.

2. Arbitrator's communications with the parties

- (a) Before accepting an appointment, an Arbitrator may only enquire as to the general nature of the dispute, the names and particulars of the parties, and the expected time period required for the proceeding.
- (b) No Arbitrator shall confer with any of the parties or their counsel until after receipt of the notice of appointment as Arbitrator.
- (c) All correspondence and communication between the Arbitrator and parties shall remain private and confidential and shall not be copied to anyone other than the parties to the dispute and BIAC, unless the parties agree otherwise.

3. Arbitrator's conduct during Arbitration proceedings

- (a) An Arbitrator shall at all times keep BIAC informed of the status of the proceedings.
- (b) The Arbitrator will ensure that, before the Arbitration begins, the parties have understood and agreed to the terms and conditions which will govern the Arbitration including those relating to obligations of confidentiality on the Arbitrator and on the parties.
- (c) Once the Arbitration proceedings commence, the Arbitrator shall acquaint himself with all the facts and arguments presented and all the discussions relating to the proceedings, so that he may

properly understand the dispute and assist the parties to reach a settlement.

4. Fees

- (a) An Arbitrator shall adopt the BIAC Annexure of Fees
- (b) An Arbitrator shall not enter into a fee agreement with any party contingent upon the result of the Arbitration or amount of settlement.

5. Exclusion from BIAC's Panel or Directory of Arbitrators

Failure to conform to this Code may be a basis of removal or disqualification of the Arbitrator from the Arbitration process and removal from BIAC's Panel or Directory of Arbitrators, after giving the Arbitrator an opportunity to explain. Any decision of BIAC Board in this regard will be final and binding.

6. Miscellaneous

- (a) This Code of Conduct is for the guidance of the Arbitrator, and shall not be used as grounds for the setting aside of any settlement agreement.
- (b) Should any question arise regarding the interpretation of any provision in this Code, the decision of BIAC shall be final.
- (c) This Code may be amended or modified by BIAC at any time without prior notice.

Bangladesh International Arbitration Centre (BIAC)

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