

# **Arbitration Rules of the Sharm El-Sheikh International Arbitration Centre**

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## **CHAPTER ONE: GENERAL PROVISIONS**

### **Article 1: Definitions**

In these Rules:

- “**SHIAC**”: means **Sharm El-Sheikh International Arbitration Centre**.
- “**Arbitration Rules**”: means the procedural rules applied on all arbitrations organized by **SHIAC**.
- “**Secretariat**”: means **SHIAC**'s Secretariat
- “**Secretary General**”: means the Secretary General in charge of **SHIAC**
- “**The Claimant**”: includes one or more Claimants.
- “**The Respondent**”: includes one or more Respondents.
- “**The Expert**”: means a qualified person in a specific technical area that assists the arbitral tribunal in issues which cannot be undertaken by a non-expert.
- “**The Court**”: means any national court originally competent to examine the dispute if it had not been examined by the arbitral tribunal or the competent national court to enforce the arbitral award.
- “**The Award**”: means any interim, partial or final award.

### **Article 2: Scope of Application**

- 2.1 These rules of Arbitration shall apply to all Commercial International and Internal disputes submitted to **SHIAC**.
- 2.2 These rules of Arbitration shall apply by virtue of the express consent of the Parties either in the Arbitration Clause as stated in the contract or in a later agreement.
- 2.3 The Parties may agree to modify the Arbitration Rules of **SHIAC** within the limits of the law applicable at the place of Arbitration.
- 2.4 Unless otherwise agreed by the Parties, all issues that are not specifically provided for herein shall be subject to the Egyptian Law of Arbitration in Civil and Commercial matters as promulgated by the Law No. 27/1994.

### **Article 3: Exoneration of Responsibility**

Neither **SHIAC** nor the Arbitrators shall be liable to any person for act or omission in connection with any proceedings of Arbitration or any means of settling the disputes.

## **Chapter Two: Commencement Of The Arbitral Proceedings**

### **Article 4: Request for Arbitration**

4.1 Any Party hereinafter called “the Claimant” wishing to have recourse to Arbitration under **SHIAC** rules shall submit its written Request for Arbitration to the Secretariat.

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

- a) Full name, address, telephone and fax numbers, e-mail of each of the Parties.
  - b) A brief description of the nature and circumstances of the dispute between the Parties including a statement to the relief sought, a summary of the grounds for the Claim, and, if possible, a financial estimate of the amount of the Claim.
  - c) All relevant information that may assist in determining the number of Arbitrators and their choice as well as any nomination of an Arbitrator required thereby.
- 4.2 Together with the Request for Arbitration, the Claimant shall provide a copy of the Arbitration Agreement, all correspondence between the Parties and other relevant documents.
- 4.3 The Request for Arbitration and the documents annexed thereto shall be supplied in a number of copies sufficient to provide one copy for the Secretariat and one copy for each Arbitrator.
- 4.4 The Claimant shall also attach to the Request for Arbitration, proof of the dispatch of the Request to the Respondent and the documents annexed thereto.

### **Article 5: Date of Commencement of the Arbitral Proceedings:**

The date on which the Secretariat receives the Request for Arbitration and the annexes thereto and the payment of the registration costs such as determined in the Annex shall be deemed to be the date of Commencement of the Arbitral Proceedings. The Secretariat shall confirm this date to the Parties.

### **Article 6: Answer to the Request for Arbitration and Filing of a Counterclaim**

6.1 Within one month from the date of Commencement of the Arbitral Proceedings, the Opponent hereinafter called “the Respondent” shall send its Answer to the Request for Arbitration to the Secretariat.

The Answer shall include, *inter alia*, the following information:

- a) Full name, description of the dispute, address, telephone and fax numbers, e-mail address of the Respondent Party;
- b) A brief comment on the nature and circumstances of the dispute that gives rise to the Claim;
- c) Its response to the relief sought;

- d) Its comments concerning the number of Arbitrators and their choice in light of the Claimant's proposals as well as any nomination of an Arbitrator required thereby;

The Answer and the documents annexed thereto shall be supplied in a number of copies sufficient to provide one copy for each Arbitrator and one for the Secretariat.

6.2 Any counterclaim made by the Respondent shall include:

- a) A recital of the nature and circumstances of the dispute that gives rise to the counterclaim.
- b) An indication of the object of the Counterclaim and, if possible, a financial estimate of the amount of the counterclaim.

**Article 7: Extension of the Time Limit for Filing the counterclaim**

The time limit mentioned in Article 6 of these Rules may be extended, pursuant to a reasoned request of the Respondent, or on its own motion, by the Secretariat.

**Article 8: Lack of an Apparent Arbitration Agreement**

In case there is no apparent (*prima facie*) Arbitration Agreement, the Arbitration may not proceed should the Respondent not answer within the one month period mentioned in Article 6, or should the Respondent refuse arbitration in accordance with **SHIAC** Rules.

**Article 9: Effect of the Arbitration Agreement**

- 9.1 When the Parties agree to resort to **SHIAC** for Arbitration, they thereby submit to the Rules, including the annexes, which are in effect on the Date of the Commencement of the Arbitral Proceedings, unless they have agreed to submit to the Rules in effect on the date of their Arbitration Agreement.
- 9.2 If, notwithstanding an apparent (*prima facie*) Arbitration Agreement, one of the Parties refuses to submit to Arbitration, or fails to take part in the Arbitration, the Arbitration shall nevertheless proceed.
- 9.3 If, notwithstanding an apparent (*prima facie*) Arbitration Agreement, a Party raises one or more pleas concerning the existence, validity or scope of the Arbitration Agreement, the Arbitration shall proceed without deciding on the admissibility or merits of the pleas. In such case, the Arbitral Tribunal shall itself rule on its jurisdiction.
- 9.4 Unless otherwise agreed, the Arbitral Tribunal shall not cease to have jurisdiction by reason of the nullity or non-existence of the contract, provided that the Arbitral Tribunal upholds the validity of the arbitration agreement.

## **Article 10: Communication of the Documents**

All pleadings and other written communications submitted by any Party, as well as all documents annexed thereto, shall be sent by special courier or registered mail to each Party and to each Arbitrator. A copy of these communications shall be sent to the Secretariat.

A copy of any communication from the Arbitral Tribunal to the Parties shall be sent to the Secretariat.

## **Article 11: Written Notifications or Communications and Time Limits**

11.1 The Request for Arbitration, the Answer to the Request for Arbitration, all pleadings, the appointment of the Arbitrators and the Notification of the Award shall be valid if they are made by registered mail, courier, or any other means of communication that proves their dispatch. All other Notifications and Communications made pursuant to these Rules may be made by any other form of written communication.

If a Party is represented by Counsel, all Notifications or Communications shall be made to the latter, unless that Party requests otherwise.

All Notifications or Communications shall be valid if dispatched to the last address of the Party, as notified either by the Party in question or by the other Party.

11.2 A Notification or Communication, made in accordance with Clause 11.1, shall be deemed to have been made when it is received or should have been received by the Party itself, by its representative or its counsel.

11.3 Periods of Time specified in the present Rules, shall start to run on the day following the date a Notification or Communication is deemed to have been made in accordance with Article 7.2. If the last day of the relevant period of time granted is an official holiday or a non-business day in the country where the notification or communication has to be made the period of time shall expire at the end of the first following business day.

A Notice or Communication shall be treated as having been sent timely if it is dispatched in accordance with Article 7.1 prior to, or on the date of, the expiry of the time limit.

## **CHAPTER THREE: THE ARBITRAL TRIBUNAL**

### **Article 12: General Provisions**

12.1 Only those persons who are impartial and independent of the Parties and of their counsels and who comply with the rules of good conduct may serve as Arbitrators in Arbitration Proceedings organized by **SHIAC**.

- 12.2 The Arbitrator who was appointed or whose nomination has been approved, shall sign a Statement of Independence and disclose in writing to the Secretariat any facts or circumstances which might be of such a nature so as to call into question the Arbitrator's impartiality and independence in the eyes of the Parties. The Secretariat shall provide such information to the Parties in writing and fix a time limit for any comments from them.
- 12.3 An Arbitrator shall immediately disclose in writing to the Secretariat and to the Parties any facts or circumstances of a similar nature as those mentioned in Article 8.2 which may arise during the arbitration.
- 12.4 The Decisions of **SHIAC** as to the Appointment, Approval, Challenge or Replacement of an Arbitrator shall be final. These Decisions do not have to state the reasons for the Decision.
- 12.5 By accepting to serve, every Arbitrator undertakes to carry out his responsibilities until the end in accordance with these Rules.

### **Article 13: Appointment of Arbitrators**

- 13.1 **SHIAC** shall appoint, or approve the nomination of, the Arbitrators in accordance with the following rules. Thereby, it will take into account more particularly the availability, the qualifications and the ability of the Arbitrator to conduct the Arbitration in accordance with these Rules.
- 13.2 Where the Parties have agreed to settle their dispute through a sole Arbitrator, they may appoint him by mutual consent, subject to the approval of **SHIAC**.

Should the Parties fail to agree on the nomination of a sole Arbitrator within one month of the notification of the Request for Arbitration to Respondent, or within such additional time as may be allowed by the Secretariat, the sole Arbitrator shall be automatically appointed by **SHIAC**

Where **SHIAC** refuses to approve the nomination of the Arbitrator, the interested Party shall proceed with the replacement within one month of the Notification of Refusal to the Parties.

- 13.3 When it has been agreed to appoint three Arbitrators, each Party shall nominate its Arbitrator in the Request for Arbitration or in the Answer to this Request, subject to the approval of **SHIAC**. Where a Party refrains from nominating its Arbitrator or if the latter is not approved, **SHIAC** shall automatically appoint the Arbitrator.

The third Arbitrator, who will act as chairman of the Arbitral Tribunal, shall be appointed by **SHIAC**, unless the Parties have agreed upon another procedure for such appointment, in which case the appointment shall be subject to approval by **SHIAC**. Should such procedure not result in an appointment within the time limit fixed by the Parties or the Secretariat, the third Arbitrator shall be automatically appointed by **SHIAC**.

Where there are multiple Parties, whether as Claimants or as Respondents, and where the dispute is referred to three Arbitrators, the multiple Claimants, jointly, and the multiple Respondents, jointly, shall nominate one Arbitrator for approval pursuant to the stipulations of the present article.

In the absence of such a joint nomination and where all Parties are unable to agree on a method for the constitution of the Arbitral Tribunal, **SHIAC** may appoint each member of the Arbitral Tribunal and shall designate one of them to act as chairman.

13.4 Where the Parties have not agreed upon the number of Arbitrators, the dispute shall be settled by a sole Arbitrator.

However, at the request of one of the Parties or on its or his own motion, **SHIAC** may decide that the case shall be heard by a Tribunal of three Arbitrators.

In these cases, Claimant shall nominate an Arbitrator within a period of fifteen days from the Receipt of the Notification of the decision of **SHIAC** and the Respondent shall nominate an Arbitrator within a period of fifteen days from the Receipt of the Notification of the nomination made by the Claimant.

13.5 **SHIAC** appoints or approves the nomination of the Arbitral Tribunal after the payment by the Parties, or by one of them, of the advance on arbitration costs in accordance with the provisions of Article 26.

#### **Article 14: Challenge of Arbitrators**

14.1 A challenge for reasons of any alleged lack of independence or for any other reason, shall be communicated to the Secretariat in writing and shall contain the facts and circumstances on which it is based

14.2 In order to be admissible the challenge must be communicated by a Party either within one month of the receipt by that Party of the notification of the Arbitrator's appointment, or within one month of the date on which that Party was informed of the facts and circumstances which it invokes in support of its challenge, whichever date is the later.

14.3 The Secretariat shall forward the request for challenge to the President of **SHIAC**. The latter shall rule on the admissibility and on the merits of the challenge, after that it has given the Arbitrator concerned, the other Parties and the other members of the Arbitral Tribunal, if any, an opportunity to present their comments in writing within a time period fixed by the President of **SHIAC**. These comments shall be communicated to the Parties and to the Arbitrators. The Parties and Arbitrators can answer to these comments within the time period fixed by the President of **SHIAC**.

## **Article 15: Replacement of Arbitrators**

15.1 In the event of an Arbitrator's death, challenge, accepted withdrawal, resignation, or if there is a cause preventing him from fulfilling his duties, or upon request of all Parties, the Arbitrator shall be replaced.

15.2 An Arbitrator shall also be replaced when **SHIAC** finds that the Arbitrator is prevented *de jure* or *de facto* from fulfilling his duties in accordance with these Rules or within the allotted time limits.

In such event, **SHIAC** shall decide on the matter after having invited the Arbitrator concerned, the Parties and any other members of the Arbitral Tribunal to comment in writing to the Secretariat within the time limit allotted by the latter.

Such comments shall be communicated to the Parties and to the Arbitrators.

15.3 When an Arbitrator has to be replaced, the President of **SHIAC** shall have discretion to decide whether or not to follow the original appointment process.

Once reconstituted, and after having invited the Parties to comment, the Arbitral Tribunal shall determine if, and to what extent, prior proceedings shall be repeated.

## **Article 16: Multi-Party Arbitration**

When several contracts containing a **SHIAC** arbitration clause give rise to disputes that are closely related or indivisible, **SHIAC** is empowered to order the joinder of the Arbitration Proceedings.

This decision shall be taken either at the request of the Arbitral Tribunal, or, prior to any other issue, at the request of the Parties or of the most diligent Party, or upon **SHIAC**'s own motion.

Where the request is granted, **SHIAC** shall appoint the Arbitral Tribunal that shall decide on the disputes that have been joined. If necessary, it shall increase the number of Arbitrators to a maximum of five. **SHIAC** shall take its decision after having summoned the Parties, and, if need be, the Arbitrators who have already been appointed.

They may not order the joining of disputes in which an interim award or an award on admissibility or on the merits of the Claim has already been rendered.

## **CHAPTER FOUR: THE ARBITRAL PROCEEDINGS**

### **Article 17: Transmission of the File to the Arbitral Tribunal**

Provided that the advance on Arbitration costs has been fully paid, the Secretariat shall transmit the file to the Arbitral Tribunal as soon as the latter has been appointed or its nomination approved.

## **Article 18: Language of the Arbitration**

- 18.1 The language of the Arbitration shall be determined by mutual agreement between the Parties. Failing such an agreement, the language or languages of the Arbitration shall be determined by the Arbitral Tribunal, due regard being given to the circumstances of the case and, in particular, to the language of the contract.
- 18.2 The Arbitral Tribunal shall have full authority to decide which of the Parties shall bear the translation costs, if any, and to what extent.

## **Article 19: Place of Arbitration**

- 19.1 The place of arbitration shall be **SHIAC** premises in the city of Sharm El-Sheikh, unless the Parties have agreed otherwise.
- 19.2 Unless otherwise agreed by the Parties and after having consulted with them, the Arbitral Tribunal may decide to hold its hearings and meetings at any other location that it considers appropriate.
- 19.3 The Arbitral Tribunal may deliberate at any place that it considers appropriate.

## **Article 20: Terms of Reference and Procedural Timetable**

- 20.1 Prior to the examination of the file, the Arbitral Tribunal shall, on the basis of documents received or in the presence of the Parties and on the basis of their latest statements, draw-up the Terms of Reference defining its task.
- 20.2 The Terms of Reference shall contain the following information:
- a) The full name and description of the Parties;
  - b) The addresses of the Parties to which Notifications or Communications arising in the course of the Arbitration may be validly made;
  - c) A brief recital of the circumstances of the case;
  - d) A statement of the Parties' Claims with an indication, to the extent possible, of the amounts Claimed or counterclaimed;
  - e) Unless the Arbitral Tribunal deems it to be inappropriate, a determination of the disputed issues;
  - f) The full names, descriptions and addresses of the Arbitrator(s);
  - g) The place of Arbitration;
  - h) Any other particulars that the Arbitral Tribunal may deem to be useful.
- 20.3 The Terms of Reference must be signed by the Parties and the members of the Arbitral Tribunal.

If one of the Parties refuses to take part in the drawing up of the Terms of Reference or to sign them, in spite of being bound by a **SHIAC** Arbitration Clause, the Arbitral Award may be rendered after the time limit set by the Secretariat to the Arbitral Tribunal for the obtaining of the missing signature has expired.

- 20.4 When drawing up the Terms of Reference, or as soon as possible thereafter, the Arbitral Tribunal, after having consulted the Parties, shall establish in a separate document a Procedural Timetable that it intends to follow for the conduct of the arbitration and shall communicate same to the Secretariat as well as to the Parties. Any subsequent modifications of the Procedural Timetable shall be communicated to the Secretariat and to the Parties.
- 20.5 The Arbitral Tribunal shall have the power to decide on an *ex aequo et bono* basis only if the Parties have authorized it to do so. In such event, the Arbitral Tribunal shall nevertheless abide by **SHIAC** Rules.

**Article 21: Examination of the Case**

- 21.1 The Arbitral Tribunal shall proceed as soon as possible to examine the case by all appropriate means. It may, *inter alia*, obtain evidence from witnesses and appoint one or more experts.
- 21.2 The Arbitral Tribunal may decide the case solely on the basis of the documents submitted by the Parties, unless the Parties or one of them requests a hearing.
- 21.3 Either at the request of a Party or upon its own motion, the Arbitral Tribunal, subject to the giving of reasonable notice, may summon the Parties to appear before it on the day and at the place specified by it.
- 21.4 If any of the Parties, although duly summoned, fails to appear, the Arbitral Tribunal shall nevertheless be empowered to proceed, provided it has ascertained that the summons was duly received by the Party and that there is no valid excuse for its absence. In any event, the Award shall be deemed to be contradictory.
- 21.5 The hearings shall not be public. Save with the approval of the Arbitral Tribunal and the Parties, persons not involved in the proceedings shall not be admitted.
- 21.6 The Parties shall appear in person or through duly authorized representatives or counsel.
- 21.7 New Claims or counterclaims must be presented in writing. The Arbitral Tribunal may refuse to examine such new Claims if it considers that they might delay the examination of, or the ruling on, the original Claim, or if they are beyond the limits of the Terms of Reference. It shall consider any other relevant circumstances.

**Article 22: Interim and Conservatory Measures**

- 22.1 Without prejudice to the appropriate provisions in the Egyptian Law for Civil and Commercial Proceedings, each Party may ask the Arbitral Tribunal, as soon as it has been appointed, to order interim or conservatory measures, including the Provision of Guarantees or Security for Costs. Any such measure shall take the form of an order, setting out the reasons for the decision, or, if the Arbitral Tribunal considers it appropriate, an Award.

22.2 All measures ordered by the ordinary courts in relation to the dispute must be communicated immediately to the Arbitral Tribunal and to the Secretariat of **SHIAC**.

**Article 23: The Applicable Law to the Merits of the Dispute:**

23.1 The Arbitral Tribunal shall apply the rules designated by the Parties as applicable to the Merits of the Dispute. Failing such designation by the Parties, the Arbitral Tribunal shall apply the law determined by the conflict of law rules, which it considers applicable.

23.2 In all cases, the Arbitral Tribunal shall decide in accordance with the terms of the contract and shall take into consideration the trade usages applicable to the contract.

**CHAPTER FIVE: THE ARBITRAL AWARD**

**Article 24: Time Limit for the Arbitral Award**

24.1 The Arbitral Tribunal shall render the Award within four months of the date of the Terms of Reference mentioned in Article 20.

24.2 This time limit may be extended pursuant to a reasoned request from the Arbitral Tribunal, or upon its own motion, by the Secretariat.

**Article 25: Award Made By More Than One Arbitrator**

Where there is more than one Arbitrator, the Award shall be made by a majority decision. If no majority can be reached, the chairman of the Arbitral Tribunal shall have the casting vote.

**Article 26: Award by Consent**

Should the Parties reach a settlement after the appointment of the Arbitral Tribunal, the settlement shall be recorded in the form of an Award made by Consent of the Parties if so requested by the Parties and if the Arbitral Tribunal agrees to do so.

**Article 27: Making of the Award**

The Arbitral Award is deemed to be made at the place of the Arbitration and on the date stated in the Award. It may be made public after the consent of both Parties.

**Article 28: Notification of the Award to the Parties; Deposit of the Award**

28.1 Once the Award has been made, the Arbitral Tribunal shall transmit it to the Secretariat in as many original versions as there are Parties involved, plus one original version for the Secretariat

28.2 The Secretariat shall notify the original signed Award to the Parties, provided that the Arbitration costs have been fully paid to **SHIAC** by the Parties or by one of them.

## **Article 29: Final Nature and Enforceability of the Award**

- 29.1 The Award is Final and is not subject to Appeal. The Parties undertake to comply with the Award without delay.
- 29.2 By submitting their dispute to Arbitration under **SHIAC** Rules, the Parties waive their right to any form of recourse insofar as such a waiver can validly be made.

## **CHAPTER SIX: ARBITRATION COSTS**

### **Article 30: Nature and Amount of the Arbitration Costs**

- 30.1 The Arbitration Costs shall include the fees and expenses of the Arbitrators, as well as the Administrative Expenses of the Secretariat.

They shall be fixed by the Secretariat on the basis of the amount of the principal Claim and of any counterclaim, according to the Scale of Arbitration Costs in effect on the date of the Commencement of the Proceedings.

- 30.2 Other costs and expenses relating to the Arbitration, such as the fees and expenses of any experts appointed by the Arbitral Tribunal or the expenses incurred by the Parties, are not included in the Arbitration Costs. The Arbitral Tribunal can decide about such costs or expenses.
- 30.3 The Secretariat may fix the Arbitration Costs at a higher or lower figure than that which would result from the application of the Scale of Arbitration Costs, should this be deemed necessary due to the exceptional circumstances of the case.
- 30.4 If the amount in dispute is not specified, totally or partially, the Secretariat, may determine, taking into account all available information, the amount in dispute on the basis of which the Arbitration Costs will be calculated.
- 30.5 The Secretariat may adjust the amount of the Arbitration Costs at any time during the proceedings if the circumstances of the case or if new Claims reveal that the scope of the dispute is greater than originally considered.

### **Article 31: Advance on Arbitration Costs**

- 31.1 The advance required to cover the Arbitration Costs, as determined in accordance with Article 30, Clause 30.1 shall be paid to **SHIAC** prior to the appointment or the Approval of the Nomination of the Arbitral Tribunal by **SHIAC**.
- 31.2 Further advance payments may be required if and when any, adjustments are made to the arbitration costs in the course of the proceedings.
- 31.3 The advance on Arbitration costs, as well as the additional advance on Arbitration Costs, shall be payable in equal shares by Claimant and Respondent. However, any Party shall be free to pay the whole of the advance on Arbitration Costs should the other Party fail to pay its share.

31.4 Where a counterclaim is filed, the Secretariat may, at the request of the Parties or one of them, or on its own motion, fix separate advances on Arbitration Costs for the principal Claim and the counterclaim.

When the Secretariat has set separate advances on Arbitration Costs, each of the Parties shall pay the advance on Arbitration Costs corresponding to its principal or counterclaim. The Arbitral Tribunal shall proceed only with respect to those Claims or counterclaims in regard to which the whole of the advance on arbitration costs has been fully paid.

31.5 When a request for an additional advance on arbitration costs has not been complied with, and after consultation with the Arbitral Tribunal, the Secretariat may direct the Arbitral Tribunal to suspend its work and set a time limit, which must be not less than fifteen days, on the expiry of which the relevant Claims or counterclaims on the basis of which the additional advance was calculated shall be considered as withdrawn. A Party shall not be prevented on the grounds of such a withdrawal from reintroducing the same Claim or counterclaim at a later date in another proceeding.

**Article 32: Decisions on Arbitration Costs**

32.1 The arbitration costs shall be finally fixed by the Secretariat.

32.2 The Final Award shall mention the Arbitration Costs, as determined by the Secretariat, and decide which of the Parties shall bear them or in what proportion they shall be borne by the Parties. When the Parties have reached an agreement on the allocation of the Arbitration Costs, the Award shall record such agreement.