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| **北京仲裁委员会/北京国际仲裁中心**  **国际投资仲裁规则** | **Beijing Arbitration Commission/** **Beijing International Arbitration Center**  **Rules for International Investment Arbitration** |
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当事人约定将一国投资者与另一国家之间因投资产生的争端（以下称“国际投资争端”）提交本会仲裁但未约定仲裁规则的，视为约定适用本规则。 2. 当事人约定适用本规则解决国际投资争端但未约定仲裁机构的，视为约定将国际投资争端提交本会仲裁。 3. 当事人约定将国际投资争端提交本会依据本规则进行仲裁，但对仲裁程序的某些方面另有约定的，从其约定。 4. 当事人约定适用其他仲裁规则解决国际投资争端，并约定本会为仲裁机构或管理机构的，本会履行相应的管理职责。当事人约定适用《联合国国际贸易法委员会仲裁规则》的，本会按照《联合国国际贸易法委员会仲裁规则》及《北京仲裁委员会/北京国际仲裁中心关于适用<联合国国际贸易法委员会仲裁规则>程序指引》（本规则附件六）履行管理职责。 5. 本规则所称的约定将国际投资争端提交仲裁的协议（以下称“仲裁协议”）可以规定在合同、条约、法律法规或其他文件中，或者经由一方当事人通过合同、条约、法律法规或其他文件作出同意提交仲裁的意思表示而另一方当事人随后通过提起仲裁或其他方式予以接受的方式达成。   **第三条 放弃管辖豁免权和异议权**   1. 当事人约定依据本规则将国际投资争端提交仲裁，视为当事人放弃对于仲裁程序的管辖豁免权。对该管辖豁免权的放弃不影响对执行的豁免权。 2. 当事人知道或者理应知道本规则或仲裁协议中规定的任何条款或条件未被遵守，但仍参加或者继续参加仲裁程序且未对上述不遵守情况及时、明示地提出书面异议的，视为其放弃提出异议的权利。   **第四条 仲裁参与各方的行为准则**   1. 仲裁参与各方在仲裁程序中应始终遵循诚实信用原则。 2. 本规则未明确规定的事项，本会、仲裁庭、当事人和其他仲裁参与人应遵循本规则的精神，尽力确保仲裁程序得以公平、高效和快速地完成，并确保裁决的可执行性。 | **Table of Contents**  **Chapter I General Provisions**  **Article 1 The Beijing Arbitration Commission**  **Article 2 Application of the Rules**  [**Article 3 Waiver of Immunity from Jurisdiction and Right to 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The Beijing Arbitration Commission (the “BAC”) is an arbitral institution established in Beijing, China. 2. The BAC is also known as the Beijing International Arbitration Center (the “BIAC”). Where the Parties designate the BIAC as the arbitral institution in their arbitration agreement, the arbitration shall be administered by the BAC. 3. The Chairman of the BAC (the “Chairman”) or, with the authorization of the Chairman, one of the Vice-Chairmen or the Secretary-General of the BAC, shall perform the functions and duties vested in the Chairman by the BAC/BIAC Rules for International Investment Arbitration (the “Rules” or “BAC/BIAC Investment Arbitration Rules”). 4. The Secretariat of the BAC (the “Secretariat”) shall handle the day-to-day affairs of the BAC.For each case, the Secretariat shall designate a member of its staff as the Case Manager, who shall attend to procedural administration of and the provision of services relating to the case.   **Article 2 Application of the Rules**   1. Where the Parties have agreed to submit a dispute arising out of an investment, between a State and an investor of another State (the “international investment disputes”), to the BAC for arbitration but have not agreed on the arbitration rules, the Parties shall be deemed to have agreed that the arbitration shall be conducted in accordance with the Rules. 2. Where the Parties have agreed to apply the Rules to arbitrate international investment disputes, but have not designated an arbitral institution, the Parties shall be deemed to have agreed to submit their disputes to the BAC for arbitration. 3. Where the Parties have agreed to submit international investment disputes to the BAC for arbitration in accordance with the Rules, but have agreed otherwise on certain aspects of the arbitration, the latter agreement shall prevail. 4. Where the Parties have agreed to apply a different set of arbitration rules to arbitrate international investment disputes, and designated the BAC as the arbitral institution or administering institution, the BAC shall perform the corresponding administrative functions and duties. Where the Parties have agreed to apply the UNCITRAL Arbitration Rules, the BAC shall perform the corresponding administrative functions and duties in accordance with the UNCITRAL Arbitration Rules for the time being in force and the BAC/BIAC Procedural Guidelines for Arbitration under the UNCITRAL Arbitration Rules (Appendix F to the Rules). 5. An agreement submitting an international investment dispute to arbitration (the “arbitration agreement”) under the Rules may be expressed in a contract, treaty, statute, regulation or other instrument, or reached through an offer by one Party in a contract, treaty, statute, regulation, or other instrument that is subsequently accepted by the other Party by commencing an arbitration or by other means.   **Article 3 Waiver of Immunity from Jurisdiction and Right to Object**   1. Where the Parties agree to submit an international investment dispute for arbitration in accordance with the Rules, they shall be deemed to have waived any of their rights of immunity from jurisdiction in respect of proceedings relating to the arbitration. Such waiver of immunity from jurisdiction is without prejudice to immunity from execution. 2. A Party who knows or ought reasonably to know of a failure to comply with any provision of the Rules or any term of the arbitration agreement, but nevertheless participates in or proceeds with the arbitral proceedings without promptly and explicitly raising its objection to such non-compliance in writing, shall be deemed to have waived its right to object.   **Article 4 General Conduct of the Participants to the Arbitration**   1. Participants to the arbitration shall act in good faith throughout the arbitration proceedings. 2. In all matters not expressly provided for in the Rules, the BAC, the Arbitral Tribunal, the Parties and other participants to the arbitration shall act in the spirit of the Rules and shall make every reasonable effort to ensure the fair, efficient and expeditious conclusion of the arbitration and the enforceability of any award. |
| **第二章 启动仲裁**  **第五条 仲裁通知**   1. 根据本规则提起仲裁的一方当事人（以下称“申请人”）应向本会提交仲裁通知。仲裁通知应列明以下内容： 2. 将争端提交仲裁的书面意思表示； 3. 各方当事人及其代理人（如有）的名称、国籍和住所，包括邮政编码、电话号码、传真号码、电子邮箱或其他通讯方式； 4. 申请仲裁所依据的仲裁协议； 5. 与争端有关的合同、条约、法律法规和其他文件； 6. 申请人与有关国家之间的关系及其性质的简要说明，以及仲裁协议约束该当事人的理由； 7. 关于争端的性质和引发争端之事实的简要说明，包括所寻求的救济，并尽可能量化索赔金额； 8. 各方当事人之间是否事先就仲裁庭人数、组成方式和仲裁程序等事项作出约定，或申请人就这些事项的建议； 9. 按照本规则选定的仲裁员或关于如何选定仲裁员的提议； 10. 关于适用法律规则的意见； 11. 关于仲裁语言的意见；和 12. 申请人认为必要的其他内容。 13. 当事人就仲裁语言有约定的，仲裁通知应以仲裁语言作出；无此约定的，仲裁通知应以中文或英文作出。 14. 申请人在向本会提交仲裁通知的同时，应将仲裁通知发送给被申请人，并向本会说明向被申请人发送仲裁通知的日期和方式。 15. 申请人应按照《北京仲裁委员会/北京国际仲裁中心国际投资仲裁费用表》（以下称《费用表》）（本规则附件一）的规定缴纳案件登记费。 16. 包含第（一）款规定的全部内容或本会认为实质性符合该款规定的仲裁通知为完整仲裁通知。如果仲裁通知不完整，或申请人未按第（三）款将仲裁通知发送给被申请人，或未按第（四）款规定缴纳案件登记费，本会可以要求申请人在合理期限内予以补正。申请人未能补正的，视为未成功提交仲裁通知。任何关于仲裁通知是否完整或成功提交的争议由主任决定。 17. 仲裁程序应被视为自申请人成功提交仲裁通知之日开始。本会应当毫不迟延地向各方当事人发出仲裁程序开始通知。   **第六条 对仲裁通知的答复**   1. 被申请人应自收到仲裁通知之日起30日内向本会提交书面答复。答复应列明以下内容： 2. 被申请人及其代理人（如有）的名称、国籍、联系地址、电话号码、传真号码和电子邮件及其它电子联系方式等；   并可以列明以下内容：   1. 确认或否认全部或部分仲裁请求，包括管辖权异议（如有）； 2. 被申请人提出反请求的，应简述反请求的性质和相关情形，列明反请求的救济事项，并尽可能量化反请求事项的索赔金额； 3. 对仲裁通知中的任何陈述提出意见，或对第五条第（一）款规定所包含的事项提出意见； 4. 按照本规则指定仲裁员，或对于申请人选定的仲裁员或提议的人选提出意见。 5. 被申请人如提出反请求，则应按照《费用表》的规定就反请求缴纳案件登记费。 6. 被申请人向本会递交答复的同时，应向申请人发送答复，并向本会说明向申请人发送答复的日期和方式。   **第七条 合并仲裁**   * 1. 经一方当事人申请，并符合下列条件，主任可以决定将一个新开始的仲裁案件与一个或数个正在进行的仲裁案件合并：  1. 当事人同意合并；及 2. 所有仲裁请求依据同一份仲裁协议提出；或尽管各仲裁案件依据多份仲裁协议提出，但各仲裁案件的争端所涉及的法律关系相同，且本会认为各仲裁协议彼此相容。    1. 在决定是否可以合并仲裁时，主任应征询当事人和仲裁庭的意见，并考虑其认为相关的各种情况，包括： 3. 正在进行的仲裁案件的进展情况； 4. 程序的高效和快捷； 5. 仲裁员的指定情况；及 6. 其他相关情况。    1. 如果决定合并仲裁，主任可以解除对原仲裁员的指定。    2. 在合并仲裁的情况下，除非各方当事人另行约定，各仲裁案件应并入最先开始的仲裁案。 | **Chapter II Commencement of the Arbitration**  **Article 5 Notice of Arbitration**   1. A Party applying for arbitration under these Rules (the “Claimant”) shall submit a Notice of Arbitration to the BAC. The Notice of Arbitration shall include: 2. a written demand that the dispute be referred to arbitration; 3. the names, nationalities and addresses, including the postcodes, telephone numbers, fax numbers, electronic mail addresses, or any other electronic means of communication of the Parties and their representative(s) (if applicable); 4. a reference to the arbitration agreement that is invoked; 5. a reference to the contract, treaty, statute or other instrument out of or in relation to which the dispute arises and the relevant provisions thereof; 6. a brief statement describing the relationship and the nature of such relationship between the Claimant and any relevant State, and the reason(s) why the Parties are bound by the arbitration agreement; 7. a brief statement describing the nature of the dispute(s) and the circumstances giving rise to such dispute(s), including the relief sought and where possible, an initial quantification of the claimed amount; 8. a statement regarding any prior agreement between the Parties on matters such as the number of arbitrators, formation of the Arbitral Tribunal, the arbitral proceedings or any proposal by the Claimant on such matters; 9. any nomination of arbitrator(s) made in accordance with the Rules or any proposal for nomination of arbitrator(s); 10. any comment as to the applicable rules of law; 11. any comment as to the language of the arbitration; and 12. any other information the Claimant considers necessary. 13. Where the Parties have agreed to the language of arbitration, the Notice of Arbitration shall be made in the language of arbitration; in the absence of such agreement, the Notice of Arbitration shall be made in either Chinese or English. 14. The Claimant shall, at the same time as it files the Notice of Arbitration with the BAC, send a copy of the Notice of Arbitration to the Respondent, and shall specify to the BAC the mode of service employed and the date of service. 15. The Claimant shall pay the registration fee in accordance with the BAC/BIAC Schedule of Fees for International Investment Arbitration (the “BAC Fees Schedule”) (Appendix A to the Rules). 16. The Notice of Arbitration shall be deemed complete where all the required items of paragraph 1 are included, or where the BAC determines that there has been substantial compliance with paragraph 1. Where the Notice of Arbitration is incomplete, or where the Claimant has failed to send a copy thereof to the Respondent in accordance with paragraph 3, or where the registration fee is not paid in accordance with paragraph 4, the BAC may request the Claimant to complete such requirements within a specified period of time. If the Claimant fails to comply with such request, the submission of the Notice of Arbitration shall be deemed invalid. Any controversy with respect to the sufficiency of the Notice of Arbitration or the validity of the submission of the Notice of Arbitration shall be determined by the Chairman. 17. The Arbitration shall be deemed to commence on the date the Claimant validly submits the Notice of Arbitration. The BAC shall issue a Notice of the Commencement of Arbitration to the Parties without delay.   **Article 6 Response to the Notice of Arbitration**   * 1. The Respondent shall file a Response to the BAC within 30 days of receipt of the Notice of Arbitration. The Response shall include:  1. the names, nationalities, addresses, telephone numbers, fax numbers, electronic mail addresses, or any other electronic means of communication of the Parties and their representative(s) (if applicable);   and may include:   1. a confirmation or denial of all or part of the claim(s), including, where applicable, any plea that the Arbitral Tribunal lacks jurisdiction; 2. a brief statement describing the nature and circumstances of any counterclaim, specifying the relief claimed and, where possible, an initial quantification of the counterclaim amount; 3. any comment in response to any statements contained in the Notice of Arbitration, or any comment with respect to the matters covered under Article 5 (1); 4. the nomination of its arbitrator(s) in accordance with these Rules, or comments on the arbitrator(s) nominated or proposed by the Claimant.    1. Where the Respondent files any counterclaim, it shall pay the registration fee in accordance with the BAC Fees Schedule.    2. The Respondent shall, at the same time as it files the Response to the Notice of Arbitration to the BAC, send a copy of the Response to the Claimant, and shall specify to the BAC of the mode of service employed and the date of service.   **Article 7 Consolidation of Arbitrations**   * 1. At the request of a Party, and upon the satisfaction of the following conditions, the Chairman may decide to consolidate a newly commenced arbitration with one or more pending arbitration(s):      1. the Parties agree to consolidate; and      2. all the claims are made under the same arbitration agreement; or the arbitrations are initiated relying on two or more arbitration agreements, but the legal relationships involved in the disputes in these arbitrations are the same, and the BAC considers the arbitration agreements to be compatible.   2. In deciding whether to consolidate arbitrations, the Chairman shall consult with the Parties and the Arbitral Tribunal, and shall have regard to circumstances it considers to be relevant, including:      1. the progress of the pending arbitration;      2. the efficiency and expeditiousness of the procee­dings;      3. the nomination of the arbitrator(s); and      4. any other relevant circumstances.   3. Where the Chairman decides to consolidate arbitrations, the Chairman may remove any arbitrator(s) already appointed.   4. Where arbitrations are consolidated, those commenced later shall be consolidated into the arbitration that commenced first, unless otherwise agreed by all Parties. |
| **第三章 仲裁庭**  **第八条 仲裁员的资质要求**   * + - * 1. 仲裁员应具备高尚的道德水准、公认的法律和语言能力，特别是国际公法知识，以及处理案件所需的充足时间与精力。         2. 仲裁员的行为应符合国际公认的仲裁员行为准则。   **第九条 选任仲裁员的一般规定**   1. 本会编制《北京仲裁委员会/北京国际仲裁中心国际投资争端仲裁员名册》（以下称《名册》）。当事人可以在《名册》之内或之外选定仲裁员，但主任指定仲裁员时应当在《名册》内指定。 2. 当事人可以约定仲裁庭由独任仲裁员、三名仲裁员或其他奇数名仲裁员组成。当事人未约定仲裁庭人数的，仲裁庭应由三名仲裁员组成，适用本规则附件三规定的快速程序的案件除外。 3. 除非当事人另有约定或共同选定，独任仲裁员、首席仲裁员和仲裁庭的多数成员不得与任一方当事人具有相同国籍。 4. 主任在指定仲裁员时，应考虑当事人国籍、仲裁案件的复杂性、仲裁语言及仲裁地、争端涉及金额、仲裁员候选人的国籍、专业背景、办案时间，以及其他主任认为相关的因素。 5. 在当事人或主任依照本规则选定或指定一名仲裁员后，本会应尽速寻求被选定人或被指定人的接受。被选定人或被指定人接受选定或指定，即视为承诺按本规则履行仲裁员职责。被选定人或被指定人不接受选定或指定的，应依照先前的选定或指定方法重新选定或指定。 6. 主任关于仲裁员指定、回避、解除任命的决定均为终局决定。   **第十条 三人仲裁庭**   * + - * 1. 仲裁庭由三名仲裁员组成的，申请人应在收到仲裁程序开始通知之日起30日内，被申请人应自收到仲裁程序开始通知之日起60日内，各选定或委托主任指定一名仲裁员。一方当事人未在规定期限内指定仲裁员也未委托主任指定的，经另一方当事人请求，主任应指定该未被指定的仲裁员。         2. 首席仲裁员应由各方当事人在被申请人收到仲裁程序开始通知之日起90日内共同选定或共同委托主任指定。当事人未在该期限内共同选定或共同委托主任指定首席仲裁员的，应任一方当事人请求，主任应指定首席仲裁员。除非当事各方另有约定，主任应按照以下方式指定首席仲裁员：  1. 主任应就指定首席仲裁员向各方当事人征求意见，并要求当事人在指定期限内回复本会。主任应考虑当事人的意见，但不受其约束。当事人未在指定期限内回复并不影响主任指定首席仲裁员。 2. 主任在依据前款规定向各方当事人征求意见之后，应向每方当事人发出包含相同的不少于五名首席仲裁员候选人的名单。各方当事人可删除其反对的一名或数名候选人，并将名单上剩余的候选人按优先顺序排列，并在收到名单之日起10日内将名单发回本会。 3. 主任应从各方当事人发回名单上所载的仲裁员候选人中，参考各方当事人的优先顺序指定一人为首席仲裁员。当事人逾期未向本会发回名单的或按照本程序不能指定首席仲裁员的，主任可不再征求当事人的意见而指定首席仲裁员。如此指定的首席仲裁员可以是此前发给各方当事人的名单以外的人。    * + - 1. 除第（一）款中的“一名仲裁员”应替换为“相同人数的仲裁员”外，第（一）款和第（二）款适用于五人或更大奇数仲裁庭（“多人仲裁庭”）的仲裁员选定或指定。   **第十一条 独任仲裁员**  仲裁庭由独任仲裁员组成的，各方当事人应在被申请人收到仲裁程序开始通知之日起60日内共同选定或共同委托主任指定独任仲裁员。各方当事人未能在上述期限内共同选定或共同委托主任指定独任仲裁员的，经任一方当事人请求，主任应指定独任仲裁员。  **第十二条 多方当事人选任仲裁员**   1. 如果仲裁案件的申请人或被申请人超过一名当事人，该案件为多方仲裁案件。 2. 如果多方仲裁案件由三人仲裁庭或多人仲裁庭审理，申请人一方的所有当事人应在收到仲裁程序开始通知之日起30日内、被申请人一方的所有当事人应自收到仲裁程序通知之日起60日内，分别地共同选定或委托主任指定一名仲裁员或相同人数的仲裁员。申请人或被申请人一方未能选定或委托主任指定仲裁员的，经另一方当事人请求，主任应指定未被选定或指定的仲裁员。首席仲裁员依照本规则第十条第（二）款选定或指定。 3. 如果多方仲裁案件由独任仲裁庭审理，申请人一方和被申请人一方的所有当事人应在被申请人收到仲裁程序开始通知之日起60日内共同选定或共同委托主任指定独任仲裁员。各方当事人未能在上述期限内共同选定或共同委托主任指定独任仲裁员的，经任一方申请，主任应指定独任仲裁员。   **第十三条 仲裁庭的组成和案卷移交**   1. 仲裁庭自本会通知双方当事人所有仲裁员均接受选定或指定之日起视为组成。 2. 仲裁庭组成后，本会应尽快将案卷移交仲裁庭。本会依照第一条第（四）款指派的案件秘书担任仲裁庭秘书。   **第十四条 仲裁员的披露义务**   1. 依据本规则由当事人选定或主任指定的每位仲裁员均应保持公正性与独立性。 2. 仲裁员在接受选定或指定之时，应立即签署并向本会提交一份具备公正性与独立性及有时间处理该仲裁案件的书面声明，并在声明中披露任何可能对其公正性与独立性产生合理怀疑的任何事实或情形。本会应将此声明发送给当事人和仲裁庭其他成员。 3. 如果仲裁员在仲裁程序中出现可能对其中立性或独立性产生合理怀疑的任何事实或情形，应立即书面通知本会、各方当事人和仲裁庭其他成员。   **第十五条 仲裁员的回避**   1. 如果存在对仲裁员中立性或独立性产生合理怀疑的事实或情形，或该仲裁员并不具备当事人所约定的资格，任何当事人可以提出回避请求。 2. 当事人对其所指定的仲裁员或者其所参与指定的仲裁员提出回避请求的，只能基于该仲裁员被指定后得知的事实或情形。 3. 当事人提出回避请求的，应在其得知或理应得知仲裁员应予回避的事实或情形之日起30日内书面向本会提出，并说明具体理由。当事人未在规定时限内提出异议视为放弃提出回避请求的权利。 4. 本会在收到当事人提交的回避请求后，应及时将该请求通知其他当事人和仲裁庭所有成员，并应给予他们在指定期限内提交书面意见的机会。如收到书面意见，本会应及时将该意见通知各方当事人及仲裁庭所有成员。 5. 如果当事一方提出回避请求，其他当事人对此同意，则被请求回避的仲裁员应辞职。仲裁员辞职并不表明其被请求回避的理由成立。 6. 如果当事一方提出回避请求，其他当事人不同意该请求，或在收到该请求的通知之日起15日内未作回复，且被请求回避的仲裁员拒绝辞职，则由主任对该仲裁员的回避作出决定。在主任作出决定前，被请求回避的仲裁员应继续履行职责。主任决定不解除任命的，被请求回避的仲裁员应继续履行职责。主任决定解除任命的，应说明理由并及时通知各方当事人和仲裁庭所有成员，除非当事人另有约定。 7. 仲裁员辞职或被主任决定解除任命的，应依照本规则第十六条规定予以更换仲裁员。     **第十六条 仲裁员的替换**   1. 仲裁员死亡、主动辞职、被主任解除任命或被当事人一致要求更换的，应当任命替换该仲裁员的仲裁员。 2. 主任认为仲裁员未能依照本规则规定或当事人约定履行仲裁员职责，或出于其他法律上或事实上的原因无法履行仲裁员职责的，可予替换。主任在决定替换仲裁员前，应给予有关仲裁员和各方当事人在适当期限内提出书面评论的机会。前述书面评论应及时告知各方当事人和仲裁庭所有成员。 3. 除非当事人另有约定，应按照选定或指定原仲裁员的方式在本会指定的期限内选定或指定替换仲裁员。 4. 仲裁员替换之后，新成立的仲裁庭应决定是否以及在何种程度上重复已经完成的仲裁程序。仲裁庭在作出该决定时应征求各方当事人意见，并考虑仲裁案件的相关情形。   **第十七条 仲裁庭助理**   1. 经各方当事人的书面同意，仲裁庭可在仲裁程序的任何时间指定一名仲裁庭助理。 2. 仲裁庭应在征询当事人意见之后合理确定仲裁庭助理的资质要求与职责。在任何情况下，仲裁庭助理不得被授予任何决策权，也不得与仲裁庭秘书的职责相重复。 3. 在被指定前，仲裁庭助理候选人应签署并向本会提交一份关于保证其公正性与独立性及有时间为仲裁庭提供助理服务的书面声明。仲裁庭助理应及时披露被任命后产生的可能对其公正性与独立性产生合理怀疑的任何事实与情形。 4. 仲裁庭应确保仲裁庭助理在参与的仲裁程序的各阶段中保持公正性与独立性。 | **Chapter III Arbitral Tribunal**  **Article 8 Qualifications of Arbitrators**   1. Arbitrators shall be persons of high moral character and of recognized competence in law and language skills, particularly knowledge of public international law, and with sufficient availability and energy to determine the arbitration case. 2. Arbitrators shall ensure that their conduct conforms to the codes of ethics for arbitrators that are internationally recognized.   **Article 9 General Provisions of Nomination or Appointment of Arbitrators**   1. The BAC shall maintain a “Beijing Arbitration Commission/Beijing International Arbitration Center Panel of Arbitrators for International Investment Disputes” (the “Panel of Arbitrators”). Arbitrators may be nominated by the Parties from either within or outside the Panel of Arbitrators, while in the case of appointment by the Chairman, the arbitrators shall be appointed from within the Panel of Arbitrators. 2. The Parties may agree that the Arbitral Tribunal shall be composed of one, three or any other odd number of arbitrators. Absent such agreement, the Arbitral Tribunal shall be composed of three arbitrators, except for cases where the expedited procedures set forth in Appendix C to the Rules apply. 3. Unless otherwise agreed by the Parties or by joint nomination of the Parties, a sole arbitrator, a presiding arbitrator or the majority of arbitrators of an Arbitral Tribunal shall be of different nationality or nationalities from either of the Parties. 4. When appointing the arbitrator(s), the Chairman shall take into account the nationalities of the Parties, the complexity of the arbitration case, the language and seat of arbitration, the quantum involved in the dispute, the nationality, professional background and availability of the candidate(s) to act as arbitrator(s), and any other factor(s) the Chairman considers relevant. 5. After an arbitrator is nominated or appointed, the BAC shall, as promptly as possible, request an acceptance from the nominee or appointee. By accepting to serve, a nominee or appointee undertakes to carry out the responsibilities of an arbitrator in accordance with the Rules. Where a nominee or appointee fails to accept the nomination or appointment, another person shall be nominated or appointed in accordance with the method applicable to the previous nomination or appointment. 6. The decisions of the Chairman as to the appointment, challenge and removal from appointment of an arbitrator shall be final.   **Article 10 Three-Member Arbitral Tribunal**   1. Where a three-member Arbitral Tribunal is to be constituted, the Claimant shall, within 30 days of the receipt of the Notice of the Commencement of Arbitration, and the Respondent shall, within 60 days of the receipt of the Notice of the Commencement of Arbitration, nominate or entrust the Chairman to appoint an arbitrator respectively. If a Party fails to nominate or to entrust the Chairman to appoint an arbitrator within the time limit, that arbitrator shall be appointed by the Chairman upon the request of the other Party. 2. The Parties shall jointly nominate or jointly entrust the Chairman to appoint a presiding arbitrator within 90 days from the date of receipt by the Respondent of the Notice of the Commencement of Arbitration. Failing such nomination or appointment, the presiding arbitrator shall be appointed by the Chairman upon the request of either Party. Unless the Parties otherwise agree, the Chairman shall appoint the presiding arbitrator in accordance with the following procedure: 3. The Chairman shall invite each of the Parties to comment with regard to the appointment of the presiding arbitrator, and shall require them to reply the within a specified time limit. The Chairman shall take into consideration the comments of the Parties, but shall not be bound thereby. Failure of the Parties to reply within the specified time limit shall not impede the Chairman in appointing the presiding arbitrator. 4. The Chairman shall, after seeking the Parties’ comment in accordance with the preceding paragraph, communicate to each Party an identical list of at least five candidates for the presiding arbitrator. Within 10 days after the receipt of the list, each Party shall return the list to the BAC, after having deleted the name(s) to which it objects and numbered the remaining name(s) on the list in the order of its preference. 5. The Chairman shall appoint one candidate from among the name(s) approved on the returned lists and in accordance with the order of preference indicated by the Parties. Where a Party fails to return the list within the stipulated time limit or the appointment of the presiding arbitrator cannot be made in accordance with this procedure, the Chairman may appoint the presiding arbitrator without further consulting that Party (Parties). Such presiding arbitrator may be appointed from outside the list communicated to the Parties. 6. Save the terms “an arbitrator” in paragraph 1 being replaced with the term “an equal number of arbitrators”, paragraphs 1 and 2 apply to the nomination or appointment of arbitrators of an Arbitral Tribunal to be composed of five or a larger odd number of members (the “multi-member Arbitral Tribunal”).   **Article 11 Sole Arbitrator**  Where the Arbitral Tribunal is to be composed of a sole arbitrator, the Parties shall, within 60 days from the date of receipt by Respondent of the Notice of the Commencement of Arbitration, jointly nominate or jointly entrust the Chairman to appoint the sole arbitrator. Where the Parties fail to jointly nominate or jointly entrust the Chairman to appoint the sole arbitrator within the stipulated time limit, the sole arbitrator shall be appointed by the Chairman upon the request of either Party.  **Article 12 Multi-Party Appointment of Arbitrator(s)**   * 1. Where there are two or more Claimants and/or Respondents in an arbitration case, the arbitration case is a multi-Party arbitration case.   2. Where a multi-Party arbitration case is to be determined by a three-member Arbitral Tribunal or a multi-member Arbitral Tribunal, all the Parties of the Claimant side shall, within 30 days of the receipt of the Notice of the Commencement of Arbitration, and all the Parties of the Respondent side shall, within 60 days of the receipt of the Notice of the Commencement of Arbitration, jointly nominate or jointly entrust the Chairman to appoint an arbitrator or an equal number of arbitrators respectively. Where the Claimant side or the Respondent side fails to nominate or entrust the Chairman to appoint the arbitrator(s), the Chairman shall appoint the arbitrator(s) upon the request of the other side. The presiding arbitrator shall be nominated or appointed in accordance with Article 10 (2) of the Rules.   3. Where a multi-Party arbitration case is to be determined by a sole arbitrator, all the Parties of the Claimant side and the Respondent side shall, within 60 days from the date of receipt by Respondent of the Notice of the Commencement of Arbitration, jointly nominate or jointly entrust the Chairman to appoint the arbitrator. Where the sole arbitrator fails to be nominated or appointed within the stipulated time limit, the sole arbitrator shall be appointed by the Chairman upon the request of either side.   **Article 13 Constitution of the Arbitral Tribunal and Transmission of the File**   1. The Arbitral Tribunal shall be deemed to be constituted on the date the BAC notifies the Parties that all the arbitrators have accepted their nominations or appointments. 2. The BAC shall transmit the file to the Arbitral Tribunal as soon as the Arbitral Tribunal has been constituted. The Case Manager designated by the BAC under Article 1 (4) shall act as the Secretary to the Arbitral Tribunal.   **Article 14 Disclosure by Arbitrators**   1. Any arbitrator nominated or appointed under the Rules shall be and remain impartial and independent. 2. Upon acceptance of nomination or appointment, an arbitrator shall immediately submit to the BAC a signed written statement of impar­tiality and independence and availability to determine the arbitration case, which shall also disclose any facts or circumstances that may give rise to justifiable doubts as to the arbitra­tor’s impartiality or independence. The BAC shall send a copy of the statement to the Parties and the other members of the Arbitral Tribunal. 3. An arbitrator shall immediately inform the BAC, the Parties and the other members of the Arbitral Tribunal in writing if any facts or circumstances that may give rise to justifiable doubts as to his/her impar­tiality or independence arise during the course of the arbitration.   **Article 15 Challenges to Arbitrators**   1. A challenge to an arbitrator may be made by any Party if there exist facts and circumstances that give rise to justifiable doubts as to the arbitrator’s impartiality or independence, or if the arbitrator does not possess the qualifications that the Parties have agreed upon. 2. A Party may challenge an arbitrator that it has appointed, or in whose appointment it has participated, only for facts and circumstances of which it becomes aware of after the appointment of the arbitrator was made. 3. To challenge an arbitrator, a Party shall submit a written notice to the BAC within 30 days from the date it knew or should have known the facts and circumstances that could justify a challenge to that arbitrator. The notice shall specify the reason(s) for the challenge. Failure to challenge an arbitrator within the stipulated time limit shall constitute a waiver of that Party’s right to make the challenge. 4. Upon receipt of the notice of challenge from a Party, the BAC shall promptly send a copy of the notice to the other Party and to all of the members of the Arbitral Tribunal, and shall provide the Parties an opportunity to submit written comments on the challenge within a specified time limit. Where a comment is submitted, the BAC shall promptly communicate it to the Parties and all of the members of the Arbitral Tribunal. 5. Where a Party challenges an arbitrator and the other Party agrees to the challenge, the challenged arbitrator shall voluntarily withdraw from office. Voluntarily withdrawal of an arbitrator does not imply acceptance of the validity of the ground(s) for the challenge. 6. Where a Party challenges an arbitrator and the other Party does not agree to the challenge or fails to respond thereto within 15 days of receipt of the notice of challenge, and the challenged arbitrator refuses to withdraw from office voluntarily, the Chairman shall decide the challenge. The challenged arbitrator shall continue with the arbitration until a decision is made by the Chairman. Where the Chairman decides that the challenged arbitrator should remain in office, the arbitrator shall continue with the arbitration. Where the Chairman decides that the challenged arbitrator should be removed, the decision shall be reasoned and promptly communicated to the Parties and all of the members of the Arbitral Tribunal, unless the Parties otherwise agreed. 7. Where an arbitrator voluntarily withdraws from office or is removed by the Chairman, the arbitrator shall be replaced in accordance with Article 16 of the Rules.     **Article 16 Replacement of Arbitrators**   1. In the event of the death, voluntary withdrawal from office or removal of an arbitrator by the BAC, or where all of the Parties require an arbitrator to be replaced, a substitute arbitrator shall be appointed. 2. Where Chairman finds that an arbitrator fails to perform the arbitrator’s duties in accordance with the Rules or the agreement of the Parties, or that an arbitrator is prevented *de jure* or *de facto* from fulfilling the arbitrator’s functions, the arbitrator may be replaced. In making a replacement decision, the Chairman shall provide the relevant arbitrators and the Parties an opportunity to comment in writing within a specified time limit. Such comments shall be promptly communicated to the Parties and all members of the Arbitral Tribunal. 3. Unless otherwise agreed by the Parties, the substitute arbitrator shall be nominated or appointed within the time limit specified by the BAC in accordance with the same procedure that applied to the nomination or appointment of the replaced arbitrator. 4. Subsequent to the replacement of the arbitrator, the new Arbitral Tribunal shall decide whether and to what extent any prior arbitration proceedings should be repeated. The Arbitral Tribunal shall, when making such decision, invite the Parties to comment and take into account the relevant circumstances of the arbitration case.   **Article 17 Assistant to the Arbitral Tribunal**   1. Upon the written approval of the Parties, the Arbitral Tribunal may at any time during the arbitra­tion proceedings appoint an assistant to the Arbitral Tribunal. 2. The Arbitral Tribunal shall reasonably determine the qualification(s) and function(s) of its assistant after consulting the Parties. In any case, the assistant to the Arbitral Tribunal shall not be delegated any decision-making authority, nor duplicate the tasks of the Secretary of the Arbitral Tribunal. 3. Before being appointed, the candidate of the assistant to the Arbitral Tribunal shall submit to the BAC a signed written statement with regard to his/her impar­tiality and independence and availability to provide assistance to the Arbitral Tribunal. After being appointed, the assistant shall promptly disclose any facts or circumstances that may give rise to justifiable doubts as to his/her impartiality or independence. 4. The Arbitral Tribunal shall ensure that its assistant remains impartial and independent at all stages of the arbitration proceedings in which the assistant involves. |
| **第四章 仲裁程序**  **第十八条 仲裁的进行**   1. 除非当事人另有约定或者适用法律规则或本规则另有规定，仲裁庭可以在与当事人磋商后，按照其认为适当的方式推进仲裁程序，以确保国际投资争端的公正、快速、低成本和最终解决。 2. 除非当事人另有约定，仲裁庭认为必要时可以就所审理的案件发布程序令。经仲裁庭授权，首席仲裁员可以单独决定案件的程序安排。 3. 在任何情形下，仲裁庭应当公平和公正行事，确保各当事人均有平等和合理的陈述机会。 4. 仲裁庭在作出本规则授权仲裁庭可主动作出的程序性命令或决定之前，应征求各方当事人的意见。 5. 当事人承诺遵守仲裁庭作出的任何命令或决定。   **第十九条 第一次会议、工作程序和时间表**   1. 在仲裁庭组成后30日内或者当事人同意的其他期限内，仲裁庭应当与当事人举行第一次会议，协商案件的工作程序和时间表。第一次会议可以当面举行，也可以视频会议、电话会议等其他方式举行。仲裁庭可以在会议前邀请当事人就案件的工作程序和时间表发表书面意见。 2. 仲裁庭应在举行第一次会议后10日内发布第1号程序令，确定案件的工作程序并制定案件的时间表，并通知本会和双方当事人。仲裁程序的建议时间表见本规则附件二。 3. 为确保持续有效地管理案件，仲裁庭经与双方当事人协商后，可以修改工作程序和时间表。 4. 为确保仲裁程序的高效和快捷，自仲裁庭组成至仲裁庭作出裁决的时间一般不应超过24个月。仲裁庭预计其不能在24个月内作出裁决的，应提前至少6个月通知双方当事人并说明理由。在此情况下，仲裁庭经商双方当事人后可以延长不超过6个月的时间。如仲裁程序依照第二十九条被中止的，中止的期间不计入前述期限。   **第二十条 仲裁地**   1. 当事人对仲裁地有约定的，从其约定。当事人对仲裁地没有约定的，由主任根据案件具体情况确定仲裁地，但该仲裁地应位于《承认及执行外国仲裁裁决公约》的成员国内。 2. 仲裁裁决视为在仲裁地作出。 3. 经商当事人，仲裁庭可以决定在其认为适当的其他地点开庭审理或者与当事人举行会议。仲裁庭可以在其认为适当的任何地点以其认为适当的任何方式进行合议。   **第二十一条 仲裁语言**   1. 当事人对仲裁语言作出约定的，从其约定。没有约定的，由仲裁庭视案件的具体情形确定仲裁程序中应使用的语言。 2. 当事人以仲裁语言以外的其他语言提交文件的，仲裁庭或者在仲裁庭组成之前主任可以要求该当事人提交仲裁语言的译本。   **第二十二条 当事人的代理人**   1. 当事人可以授权代理人代理仲裁事宜。当事人或其代理人应当向其他当事人、仲裁庭及本会提交授权委托书。 2. 仲裁庭组成后，当事人变更或者增加代理人的，应毫不延迟地书面通知其他当事人、仲裁庭和本会。   **第二十三条 当事人的书面陈述**   1. 除非当事人另有约定或者仲裁庭另有决定，当事人应当按照本条的规定提交书面陈述。 2. 除非当事人另外约定或仲裁庭另有决定要求提交纸质版，本条所指的所有陈述均应仅提交电子版。 3. 申请人应当在仲裁庭确定的期限内向被申请人、仲裁庭和本会提交《申请人陈述》，详细列明： 4. 仲裁请求所依据的事实； 5. 支持仲裁请求的法律依据或观点； 6. 支持仲裁请求的证据； 7. 所请求的救济及索赔金额。 8. 被申请人应当在仲裁庭确定的期限内向申请人、仲裁庭和本会提交《被申请人陈述》，详细列明： 9. 答辩意见和反请求（如有）所依据的事实； 10. 支持答辩意见和反请求（如有）的法律依据或观点； 11. 支持答辩意见和反请求（如有）的证据； 12. 反请求（如有）所寻求的救济及索赔金额。 13. 经当事人约定或在仲裁庭认为必要时，当事人应当在仲裁庭确定的期限内分别提交《申请人回复》和《被申请人反驳》。《申请人回复》和《被申请人反驳》应限于回应在先的书面陈述。 14. 当事人可以修改其仲裁请求、反请求或其他陈述，但提出修改的时间过迟的、修改会损害其他当事人利益的或者有其他不宜接受修改请求的情形的，仲裁庭可以驳回当事人的修改请求。申请人和被申请人对仲裁请求或反请求的修改不得导致修改后的仲裁请求或反请求超出仲裁协议的范围，也不得在提交《申请人陈述》或《被申请人陈述》之后对仲裁请求或反请求作出将导致争端范围扩大的修改。 15. 当事人是否应当或者可以提交进一步的陈述由仲裁庭决定。仲裁庭应确定提交该等进一步陈述的期限。 16. 当事人在提交本条所述的任何陈述时，应同时提交支持该陈述的文件和法律观点，相同的文件和法律观点此前已被提交的除外。 17. 如申请人未能在规定的期限内提交《申请人陈述》，仲裁庭可以决定终止仲裁程序，或者作出其他适当决定。 18. 如被申请人未能提交《被申请人陈述》，或者一方当事人在任何阶段未能按照仲裁庭指示的方式陈述其案件，仲裁庭可以继续仲裁程序。   **第二十四条 开庭审理**   1. 除非当事人另有约定，仲裁庭应举行一次或多次庭审，以供当事人出示证据和/或就案件的实体问题或者与管辖权、分阶段审理等有关的其他问题进行口头陈述。 2. 仲裁庭应在与双方当事人及本会磋商后，确定开庭的日期、时间、方式和地点（如当面举行），并适当提前通知双方当事人。一方当事人有正当理由的，可以申请延期开庭。是否准许，由仲裁庭决定。 3. 当事人约定公开审理的案件，当事人需在庭审中使用机密信息或其他受保护信息的，应提前通知仲裁庭；仲裁庭应作出适当安排以保护该信息不被泄漏。 4. 当事人未约定公开审理的案件，庭审应不公开进行。不公开审理的案件，除非本规则另有规定或当事人双方另有约定，任何录音、笔录或仲裁程序中用到的其他文件均应被保密，并且双方当事人及其代理人、仲裁员、证人、翻译、仲裁庭指定的专家和鉴定人以及其他有关人员，均不得对外界透露案件实体和程序的有关情况。   **第二十五条 缺席审理**   1. 经第二十四条第（二）款下的书面通知, 申请人无正当理由不到庭或者未经仲裁庭许可中途退庭的，可以视为撤回仲裁请求。被申请人提出反请求的，不影响仲裁庭对被申请人的反请求进行审理。 2. 经书面通知, 被申请人无正当理由不到庭或者未经仲裁庭许可中途退庭的，仲裁庭可以进行缺席审理。被申请人提出反请求的，可以视为撤回反请求。 3. 一方当事人的缺席不应被视为对另一方当事人请求或反请求的认可。   **第二十六条 证据**   1. 每一方当事人对赖以支持其仲裁请求、反请求或答辩意见的事实承担举证责任。 2. 仲裁庭可以自行，或者应一方当事人在仲裁庭设定的期限内提交的合理请求: 3. 要求一方或双方当事人提交证据，包括但不限于书证、证人证言和专家报告; 4. 对与争端有关的现场进行勘察，并在现场进行询问；双方当事人有权参加该等勘察和询问。 5. 双方当事人应配合仲裁庭关于提交证据的要求以及仲裁庭依据第（二）款所采取的其他措施。有当事人不履行本款项下义务的，仲裁庭应注意到不履行义务的事实及该当事人就不履行所提出的理由。   **第二十七条 证人**   1. 当事人有权向仲裁庭提出将任何了解争议问题或具有专业或技术知识的人作为证人包括专家证人。拟请证人作证的当事人应当在仲裁庭规定的期限内提交一份书面声明，其中载明证人身份和证明事项，并尽可能包括该证人采取宣誓书形式或者其他形式的书面证词。 2. 仲裁庭可以允许、拒绝或限制证人当庭口头作证。 3. 每一方当事人及其代理人和仲裁庭可以仲裁庭确定的方式向口头作证的证人发问。 4. 一方当事人可以请求另一方当事人的证人接受口头质证。如仲裁庭批准该请求而该证人不出庭接受口头质证的，仲裁庭可以给予该证人的书面证词以其认为合适的分量或者忽略该证词。   **第二十八条 仲裁庭任命的专家**   1. 除非双方当事人另有约定，仲裁庭可以在与双方当事人磋商后任命专家就特定问题提交报告。 2. 仲裁庭可以要求当事人向第（一）款下任命的专家提供任何有关信息，或者出示或提供任何有关文件、实物或财产以供专家检查。 3. 第（一）款下任命的专家应当向仲裁庭提交书面报告。在收到该书面报告后，仲裁庭应向双方当事人转交该报告的副本，并邀请双方当事人就报告提交书面评论意见。 4. 除非双方当事人另有约定，如仲裁庭认为有必要或者应一方当事人的请求，第（一）款下任命的专家应当在提交书面报告后出席庭审。在庭上，双方当事人应被给予盘问该专家的机会。   **第二十九条 仲裁程序的中止**   1. 具有下列情形之一的，仲裁庭可以中止仲裁程序： 2. 双方当事人共同申请中止； 3. 一方当事人申请中止；或者 4. 出现其他需要中止的情况。 5. 仲裁庭在依照第（一）款第2、3项决定中止仲裁程序之前，应给予当事人发表评论意见的机会。 6. 仲裁庭应当在中止仲裁程序的命令中确定中止期限及适当的条件。 7. 中止期限届满的，仲裁程序恢复，除非仲裁庭在中止期限届满之前应双方当事人的申请或者在一方当事人申请而另一方当事人不反对的情况下决定延长中止期限。 8. 在仲裁庭组成前，主任应依照第（一）款第1项中止仲裁程序。双方当事人应当将其约定的中止期限及任何条件告知主任。   **第三十条 撤回请求、撤销案件和终止案件**   1. 当事人可以撤回其全部请求或反请求。申请人撤回其全部请求或者被申请人撤回其全部反请求的，不影响仲裁庭审理反请求或请求并作出裁决。 2. 仲裁请求和反请求全部撤回的，仲裁庭或者在仲裁庭组成之前主任可以决定撤销案件。 3. 一方当事人撤回其请求或反请求的，如对该请求或反请求的审理已经终结且另一方当事人不同意撤回的，仲裁庭可以对该请求或反请求作出裁决。 4. 在裁决作出前，如双方当事人一致同意终止仲裁程序的，仲裁庭或者在仲裁庭尚未组成时主任应当在收到双方当事人的书面请求后，以命令的形式记录仲裁程序的终止。 5. 如一方当事人请求终止仲裁程序而另一方当事人在仲裁庭或者在仲裁庭尚未组成时由主任确定的期限内未书面表示反对的，仲裁庭或在仲裁庭尚未组成时主任应当以命令的形式记录仲裁程序的终止。 6. 如双方当事人连续六个月内或者双方约定且经仲裁庭或在仲裁庭尚未组成之时经主任同意的其他期限内未采取任何行动推进仲裁程序，或者，因为任何其他原因使仲裁程序不需要或者不可能继续进行的，仲裁庭或在仲裁庭尚未组成时主任可以在通知双方当事人之后，以命令的形式记录仲裁程序的终止。   **第三十一条 审理终结**   1. 经征询双方当事人的意见后，如仲裁庭认为就裁决中需要决定的事项不再需要双方当事人提交进一步的陈述或者实质性证据，仲裁庭应尽快宣告审理终结。仲裁庭应将该宣告通知双方当事人和本会。 2. 在裁决作出前，仲裁庭可以自行或应一方当事人的请求重新开启审理程序。仲裁庭应当将其重新开启程序的决定通知双方当事人和本会。仲裁庭应依照第（一）款的规定终结重新开启的程序。   **第三十二条 多数仲裁员继续仲裁程序**  审理终结后，如果三人仲裁庭中的一名仲裁员或多人仲裁庭中的少数仲裁员因死亡或其他原因不能参加合议并作出裁决，主任可以按照本规则第十六条的规定更换仲裁员。在征得各方当事人及主任同意后，仲裁庭的其他两名仲裁员或多数仲裁员也可以继续进行仲裁程序，作出决定或裁决。  **第三十三条 管辖权异议**   1. 关于仲裁请求或反请求不属于本会或仲裁庭管辖权范围内的异议，包括关于仲裁协议是否存在及其效力或者本规则的适用性的异议，应当尽早以书面形式提出。当事人应当不迟于提交《被申请人陈述》的截止日期或者在针对反请求提出异议时不迟于提交《申请人回复》时提出异议，除非该当事人在提交《被申请人陈述》或《申请人回复》时尚不知悉作为异议基础的事实，在后一情况下该当事人应当在知道或应当知道该事实后30日内提出异议。当事人逾期提出管辖权异议的，除非具有正当理由，仲裁庭不予受理。 2. 当事人选定或参与选定仲裁员的，不影响其提出管辖权异议。 3. 仲裁庭有权决定其管辖权。但一方当事人在仲裁庭组成之前提出管辖权异议的，主任可以根据表面证据决定本会是否明显没有管辖权。主任认定本会明显没有管辖权的，案件应被撤销。 4. 无论仲裁协议是包含在合同、条约、法律法规或其他文件中，仲裁协议应被视为独立于前述文件的所有其他条款。对前述文件是否存在及其效力的认定不影响对仲裁协议是否存在及其效力的认定。 5. 仲裁庭可以自行或应提出异议的一方当事人的请求，决定中止对案件实体问题的审理而将该异议作为先决问题进行处理。在作出该决定之前，仲裁庭应给予另一方当事人就该异议是否应作为先决问题处理发表意见的机会。 6. 如仲裁庭决定将该异议作为先决问题处理，仲裁庭应在与双方当事人协商后，决定关于审理该管辖权异议的书面和/或口头程序。   **第三十四条 先期驳回**   1. 当事人可以仲裁请求或反请求明显缺乏法律依据或明显超出仲裁庭的管辖范围为由申请先期驳回仲裁请求或反请求。 2. 先期驳回应适用如下程序： 3. 当事人应不晚于仲裁庭组成后30日或者在双方当事人另行约定的期限内以书面形式提出先期驳回申请，说明申请所基于的理由，并包括对相关事实和法律依据的陈述及附上支持性文件； 4. 仲裁庭应确定双方当事人就先期驳回申请提交书面陈述或发表口头陈述（如需要）的期限； 5. 如当事人在仲裁庭组成之前提交先期驳回申请，主任应确定双方当事人就该申请提交书面陈述的期限，以便仲裁庭在组成之后迅即考虑该申请； 6. 仲裁庭应当在以下三个日期中最晚一个日期后45日内就该申请作出决定或裁决： 7. 仲裁庭组成之日； 8. 就该申请提交最后一次书面陈述之日；或者 9. 就该申请发表最后一次口头陈述之日。 10. 如仲裁庭认定所有仲裁请求或反请求均明显缺乏法律依据或明显超出仲裁庭的管辖范围，其应作出具有此效果的裁决。其他情况下，仲裁庭应就先期驳回申请作出决定，并确定下一步仲裁程序的时限。仲裁庭的决定不影响一方当事人依据第三十三条提出管辖权异议或者在随后程序中主张仲裁请求或反请求没有法律依据。   **第三十五条 临时措施和紧急仲裁员**   1. 一方当事人可以在任何时候向仲裁庭申请采取临时措施以保护其权利，可申请采取的措施包括但不限于： 2. 防止可能对其造成当下的或迫近的损害的行动或者可能损害仲裁程序的行动； 3. 在对该争端作出裁决之前维持或恢复原状；以及 4. 保存与解决该争端有关的证据。 5. 如下程序应适用： 6. 临时措施申请应列明所拟保护的权利、所申请的措施以及使得采取该等措施成为必要的情形； 7. 仲裁庭应就该申请确定双方当事人提交书面陈述或发表口头陈述（如需要）的时限； 8. 如一方当事人在仲裁庭组成之前申请临时措施，主任应确定双方当事人就该申请提交书面陈述的时限，以便仲裁庭在组成之后迅即考虑该申请；以及 9. 仲裁庭应当在以下三个日期中最晚一个日期后30日内就该申请作出决定： 10. 仲裁庭组成之日； 11. 就该申请提交最后一次书面陈述之日；或者 12. 就该申请发表最后一次口头陈述之日。 13. 在决定是否采取临时措施时，仲裁庭应考虑所有相关情况。仲裁庭应仅在其认为情况紧急及必要时才采取临时措施。 14. 仲裁庭可以要求申请临时措施的一方当事人提交与所申请措施相关的适当保证金。 15. 仲裁庭采取临时措施所针对的情况发生实质性变化的，当事人应迅速披露。 16. 仲裁庭可以在任何时候自行或者应一方当事人的申请修改或撤销此前采取的临时措施。 17. 如双方当事人明确同意适用本规则附件四中的紧急仲裁员规则，则在仲裁庭组成之前需要紧急性临时救济的一方当事人可以依照本规则附件四中规定的程序申请该等救济。 18. 第（一）款至第（七）款所述的措施和程序不影响双方当事人依照适用法律向任何有管辖权的法院或其他主管机关申请临时措施的权利。   **第三十六条 第三方陈述**   1. 仲裁庭应允许不作为争端一方当事人的条约缔约方（“非争端缔约方”）就与该争端直接相关的条约解释问题提交书面陈述。仲裁庭在考虑双方当事人的观点之后并基于案件的情况，也可以邀请非争端缔约方依照本款提交书面陈述。 2. 双方当事人以外的任何个人或实体（“非争端方”），包括第（一）款中的非争端缔约方，可以向仲裁庭申请就争端范围内的某一事项提交书面陈述。仲裁庭在考虑双方当事人的观点之后并基于案件的情况，也可以邀请非争端方依照本款提交书面陈述。 3. 在决定是否允许非争端方依照第（二）款提交书面陈述时，仲裁庭应考虑所有相关情况，包括： 4. 该陈述是否涉及争端范围内的事项； 5. 该陈述是否及在何种程度上将提供不同于争端双方的观点、专业知识或意见，从而帮助仲裁庭解决与案件有关的事实或法律问题； 6. 该非争端方是否与本案和/或相关案件程序有重大利益关系； 7. 允许该非争端方提交书面陈述是否及在何种程度上将损害双方当事人的信息保密权利。 8. 非争端方的身份、活动、组织和权属，包括非争端方与一方当事人或非争端缔约方是否具有直接或间接的附属关系； 9. 是否有任何个人或实体向该非争端方就提交该陈述提供财务或其他帮助。 10. 双方当事人有权就一非争端方依照第（二）款提出的提交书面陈述申请是否应被接受以及提交该等陈述的条件发表意见。 11. 仲裁庭应确保非争端缔约方或非争端方依照第（一）款或第（二）款提交的意见不会影响仲裁程序且不会给任何一方当事人造成不合理的负担或不公平的损害。为此目的，依照第（一）款和第（二）款提交的陈述均应在被申请人提交《被申请人陈述》后60日内提交。仲裁庭还可以对非争端方依照第（二）款提交书面陈述设定条件，包括： 12. 该陈述的格式、篇幅或范围；以及 13. 是否支付资金，以支付因非争端方参与仲裁而增加的仲裁费用。 14. 双方当事人有权对依照第（一）款和第（二）款提交的陈述发表评论意见。 15. 仲裁庭应决定依照第（一）款或第（二）款提交了陈述的非争端缔约方或非争端方需提交哪些进一步的书面陈述。仲裁庭应为提交该等进一步陈述确定时限。 16. 如一方当事人有此要求或仲裁庭如此决定，仲裁庭可以开庭，让非争端缔约方或非争端方解释其书面陈述或者就其书面陈述接受询问。 17. 经与双方当事人协商，仲裁庭可以决定向非争端缔约方或非争端方提供与仲裁程序有关的、对于其参与仲裁程序有必要的文件，包括陈述、证据、命令和决定等。仲裁庭应采取适当措施，保障与仲裁程序有关的信息的保密性。 18. 仲裁庭在其命令、决定和裁决中可以引述或依赖非争端缔约方依照第（一）款或非争端方依照第（二）款提交的陈述。   **第三十七条 调解**   1. 在作出裁决之前的任何时候，双方当事人可以共同申请仲裁庭调解或者共同申请本会以其他适当方式和程序进行调解。在任一情况下，仲裁程序应中止。 2. 双方当事人共同申请仲裁庭调解的： 3. 仲裁庭在征得双方当事人同意后可以按照其认为适当的方式进行调解。调解过程应保密。 4. 当事人经仲裁庭调解达成和解协议的，可以撤回仲裁请求和反请求（如有），也可以请仲裁庭按照和解协议的内容作出裁决书。 5. 任何一方当事人要求终止调解或者仲裁庭认为已无调解成功的可能性时，仲裁庭应终止调解。除非双方当事人另有约定，仲裁庭应恢复仲裁程序。双方当事人共同请求更换仲裁员的，应按照原选定或指定仲裁员的方式选定或指定替代仲裁员，由此增加的费用由双方当事人平均承担。 6. 双方当事人共同申请本会以其他适当方式和程序进行调解的： 7. 当事人经调解达成和解协议的，可以撤回仲裁请求和反请求（如有）。应当事人申请，仲裁庭可以按照和解协议的内容作出裁决书。 8. 除非双方当事人另有约定，调解不成功的，仲裁庭应恢复仲裁程序。 9. 如果调解不成功，任一方当事人均不得在其后的仲裁程序、司法程序和其他任何程序中援引对方当事人在调解过程中曾发表的意见、观点、陈述或者表示认同或否定的建议或主张，或者仲裁庭在调解过程中发表的意见、观点或表态，作为其请求、答辩或反请求的依据。   **第三十八条 快速程序**  双方当事人可以同意依照本规则附件三规定的快速程序规则加快仲裁程序。  **第三十九条 第三方资助**   1. “第三方资助”是指并非争端当事人的个人或实体（“第三方资助人”）向仲裁程序的一方当事人提供资金或其他物质支持以进行仲裁活动或在仲裁中答辩。 2. 如一方当事人存在第三方资助安排，该方当事人应提交书面通知，充分披露：    1. 第三方资助的存在；    2. 第三方资助人及其最终控制人（如有）的身份；    3. 第三方资助人及其最终控制人（如有）对仲裁结果的利益关系；    4. 在仲裁员已被选定的情况下，第三方资助人及其最终控制人（如有）与仲裁员之间的关系（如有）；以及    5. 第三方资助人是否曾承诺承担对该方当事人不利的费用责任。 3. 第（二）款中的通知应在申请人或被申请人各自提交仲裁通知或对仲裁通知的答复的同时或者之后立即提交本会；第三方资助安排是在此后达成的，应在达成该安排后立即提交该通知。 4. 在初始披露之后第（二）款中述及的信息发生变化的，包括资助安排终止的，当事人有义务持续披露。 5. 仲裁庭在决定仲裁费用和其他费用的承担时，可以考虑存在第三方资助这一因素，以及接受资助的一方或双方当事人是否遵守了第（二）、（三）、（四）款的要求。如果第三方资助人未承诺承担对该方当事人不利的费用责任，仲裁庭可以要求接受该资助人的资助的当事人提交适当的费用保证金。 | **Chapter IV Arbitral Proceedings**  **Article 18 Conduct of the Arbitration**   1. Unless otherwise agreed by the Parties or provided by the applicable rules of law or the Rules, the Arbitral Tribunal may conduct the arbitration in such manner as it considers appropriate, after consulting with the Parties, to ensure the fair, expeditious, economical and final resolution of the international investment dispute. 2. Unless otherwise agreed by the Parties, the Arbitral Tribunal may, if it considers it necessary, make procedural orders. With the authorization of the other members of the Arbitral Tribunal, the presiding arbitrator may decide on the procedural arrangements for the arbitral proceedings at his/her own discretion. 3. In all cases, the Arbitral Tribunal shall act fairly and impartially and ensure that each Party shall have an equal and reasonable opportunity to present its case. 4. The Arbitral Tribunal shall consult with the Parties prior to making a procedural order or decision authorized by these Rules to be made by an Arbitral Tribunal on its own initiative. 5. The Parties undertake to comply with any order or decision made by the Arbitral Tribunal.   **Article 19 The First Session, Working Procedures and Timetable**   1. The Arbitral Tribunal shall hold the first session within 30 days of its constitution or such other period as the Parties may agree, for consulting the Parties on the working procedures and timetable of the case. The first session may be conducted through a meeting in person, by videoconference, telephone or other means of communication. The Arbitral Tribunal may invite the parties to provide written comments on the working procedures and timetable for the case. 2. The Arbitral Tribunal shall decide the working procedures and fix the timetable for the case within 10 days of the first session, and notify the Parties and the BAC. See Appendix B to the Rules for an indicative timetable. 3. To ensure continued effective case management, the Arbitral Tribunal, after consulting the Parties, may modify the working procedures or timetable. 4. To ensure the efficiency and expedition of the arbitral proceedings, the period between the constitution of the Arbitral Tribunal and the issuance of the award shall, as a general rule, not exceed 24 months. Where it expects that it cannot issue the award within 24 months, the Arbitral Tribunal shall so inform the Parties and explain the reasons for the delay at least 6 months in advance. In such a case, the Arbitral Tribunal, having consulted with the Parties, may extend the period for no more than 6 months. In cases where the arbitration proceeding is suspended in accordance with Article 29, amount of time that the proceedings is suspended shall not be counted.   **Article 20 Seat of Arbitration**   1. Where the Parties have agreed on the seat of arbitration, their agreement shall prevail. Failing such an agreement, the seat of arbitration shall be determined by the Chairman having regard to the particular circumstances of the case, provided that the seat is within the territory of a Contracting State to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. 2. The arbitral award shall be deemed as having been made at the seat of arbitration. 3. The Arbitral Tribunal, having consulted the Parties, may hold hearings or meetings with the Parties at any place it considers appropriate. The Arbitral Tribunal may hold deliberations at any place or in any manner that it considers appropriate.   **Article 21 Language of the Arbitration**   1. Where the Parties have agreed on the language(s) of the arbitration, their agreement shall prevail. In the absence of such agreement, the Arbitral Tribunal shall determine the language to be used in the arbitration having regard to the circumstances of the case. 2. If a Party submits a document written in a language other than the language(s) of the arbitration, the Arbitral Tribunal, or if the Arbitral Tribunal has not been constituted, the Chairman, may order that Party to submit a corresponding translation of the document in the language(s) of arbitration.   **Article 22 Party Representatives**   1. A Party may be represented by its authorized representative(s) in handling matters related to the arbitration. In such a case, a letter or other instrument of authorization shall be forwarded to the other Party or Parties, the Arbitral Tribunal and the BAC. 2. After constitution of the Arbitral Tribunal, any change or addition to its representatives by a Party shall be promptly communicated in writing to the other Party or Parties, the Arbitral Tribunal and the BAC.   **Article 23 Written Submissions of the Parties**   1. Unless otherwise agreed by the Parties or otherwise determined by the Arbitral Tribunal, the Parties shall make written submissions in accordance with this Article. 2. All submissions referred to in this Article shall be filed in electronic copy only, unless it is otherwise agreed by the Parties or otherwise determined by the Arbitral Tribunal that hard copies shall be filed. 3. The Claimant shall, within a period of time to be determined by the Arbitral Tribunal, send to the Respondent, the Arbitral Tribunal and the BAC a Memorial, setting out in full detail:    1. a statement of facts supporting the claim;    2. the legal grounds or arguments supporting the claim;    3. any evidence supporting the claim; and    4. the relief claimed, together with the amount of all quantifiable claims. 4. The Respondent shall, within a period of time to be determined by the Arbitral Tribunal, send to the Claimant, the Arbitral Tribunal and the BAC a Counter‐Memorial, setting out in full detail:    1. a statement of facts supporting its defense and counterclaim (if any);    2. legal grounds or arguments supporting the defense and counterclaim (if any);    3. any evidence supporting the defense and counterclaim (if any); and    4. the relief claimed together with the amount of all quantifiable counterclaims (if any). 5. By agreement of the Parties or if considered necessary by the Arbitral Tribunal, the Parties shall file a Reply and Rejoinder within a period of time to be determined by the Arbitral Tribunal. A Reply and Rejoinder shall be limited to responding to the previous written submission. 6. A party may amend its claim, counterclaim or other submissions unless the Arbitral Tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other Party or any other circumstances. However, a claim or counterclaim may not be amended in such a manner that the amended claim or counterclaim falls outside the scope of the arbitration agreement, and may not be amended after the filing of the Memorial or the Counter-Memorial respectively if the amendment substantially expands the scope of the dispute. 7. The Arbitral Tribunal shall decide which further submissions shall be required from the Parties or may be presented by them. The Arbitral Tribunal shall fix the periods of time for communicating such submissions. 8. Any submission referred to in this Article shall be accompanied by copies of all supporting documents and legal authorities that have not previously been submitted by any Party. 9. If the Claimant fails within the time specified to submit its Memorial, the Arbitral Tribunal may issue an order for termination of the arbitral proceedings or give such other directions as may be appropriate. 10. If the Respondent fails to submit its Counter‐Memorial, or if at any point any Party fails to avail itself of the opportunity to present its case in the manner directed by the Arbitral Tribunal, the Arbitral Tribunal may proceed with the arbitration.   **Article 24 Hearings**   1. Unless otherwise agreed by the Parties, the Arbitral Tribunal shall hold one or more hearings for the presentation of evidence and/or for oral submissions on the merits of the dispute or on other issues such as those as to jurisdiction or bifurcation. 2. The Arbitral Tribunal shall, after consultation with the Parties and the BAC, set the date, time, method and place (if held in person) of any hearing and give the Parties reasonable notice. A party having justified reasons may request a postponement of the hearing. The Arbitral Tribunal shall decide whether or not to postpone the oral hearing. 3. In cases where the Parties agree that the hearing shall be conducted in public, a Party seeking to use classified or otherwise protected information in the hearing shall notify the Arbitral Tribunal in advance, and the Arbitral Tribunal shall make appropriate arrangements accordingly to protect such information from being disclosed. 4. In cases where the Parties have not agreed that the hearing shall be conducted in public, the hearing shall be conducted in private. In such a case, unless otherwise provided in these Rules or agreed by the Parties, any recordings, transcripts, or documents used in relation to the arbitral proceedings shall remain confidential, and the Parties and their representatives, the arbitrator(s), any witness(es), interpreter(s), expert(s) and appraiser(s) appointed by the Arbitral Tribunal, and other relevant persons shall not disclose to any outsider any substantive or procedural matters relating to the case.   **Article 25 Default**   1. Having been duly notified in writing of the hearing under Article 24(2), if the Claimant fails to appear at the hearing without any justification, or withdraws from an ongoing hearing without the permission of the Arbitral Tribunal, the Claimant may be deemed to have withdrawn its claims. Where the Respondent has raised a counterclaim, the Claimant’s default shall not prevent the Arbitral Tribunal from proceeding with the arbitration of the counterclaims. 2. Having been duly notified in writing of the hearing, if the Respondent fails to appear at the hearing without any justification, or withdraws from an ongoing hearing without the permission of the Arbitral Tribunal, the Arbitral Tribunal may proceed with the arbitration. Where the Respondent has raised a counterclaim, such counterclaim may be deemed to have been withdrawn. 3. The default of a Party shall not be deemed as acceptance of the claim or counterclaim of the other Party.   **Article 26 Evidence**   1. Each party shall have the burden of proving the facts relied on to support its claim, counterclaim or defence. 2. The Arbitral Tribunal, on its own initiative or upon justifiable request submitted by a Party within the time limit fixed by the Arbitral Tribunal, may: 3. call upon a Party or both Parties to produce evidence, including but not limited to documents, witnesses and expert reports; and 4. visit any place connected with the dispute and conduct inquiries in such place, with the Parties having the right to participate in the visit or inquiries. 5. The Parties shall cooperate with the Arbitral Tribunal in the production of evidence and in the other measures provided for in paragraph 2. The Arbitral Tribunal shall take formal note of the failure of a Party to comply with its obligations under this paragraph and of any reasons given for such failure.   **Article 27 Witnesses**   1. The Parties have the right to produce any individual who has knowledge of the issues in dispute, or specific professional or technical knowledge to testify as a witness, including as an expert witness. The Party intending to produce witnesses shall, within the time period fixed by the Arbitral Tribunal, submit a written statement that includes the identities of such witnesses, the subject matter of their testimonies and, so far as possible, their testimonies in written form, either as an affidavit or in any other form of recording. 2. The Arbitral Tribunal may allow, refuse orlimit the appearance of witnesses to give oral evidence at any hearing. 3. Any witness who gives oral evidence may be questioned by each of the Parties, their representatives and the Arbitral Tribunal in such manner as the Arbitral Tribunal may determine. 4. Any Party may request that a witness produced by the other Party should attend for oral examination. If the Arbitral Tribunal allows the request but the witness fails to attend for oral examination, the Arbitral Tribunal may place such weight on the written testimony as it thinks fit, or disregard such testimony.   **Article 28 Tribunal-appointed Experts**   1. Unless otherwise agreed by the Parties, the Arbitral Tribunal may, following consultation with the Parties, appoint an expert to report on specific issues. 2. The Arbitral Tribunal may require a Party to give any expert appointed under paragraph 1 any relevant information, or to produce or provide access to any relevant documents, goods or property for inspection. 3. Any expert appointed under paragraph 1 shall submit a report in writing to the Arbitral Tribunal. Upon receipt of such written report, the Arbitral Tribunal shall deliver a copy of the report to the Parties and invite them to submit written comments on the report. 4. Unless otherwise agreed by the Parties, if the Arbitral Tribunal considers it necessary or at the request of any Party, an expert appointed under paragraph 1 shall, after delivery of his or her written report, participate in a hearing. At the hearing, the Parties shall have the opportunity to examine such expert.   **Article 29 Suspension of the Arbitral Proceedings**   1. The Arbitral Tribunal may suspend the arbitral proceeding: 2. by agreement of the Parties; 3. at the request of a Party; or 4. under other circumstances where such suspension is necessary. 5. The Arbitral Tribunal shall give the Parties an opportunity to make observations before ordering the suspension of the proceeding pursuant to paragraph (1)(b) or (c). 6. In its order recording the suspension of the proceeding the Arbitral Tribunal shall specify the period of the suspension and any appropriate conditions. 7. The arbitral proceedings shall resume as soon as the period of suspension ends, unless the Arbitral Tribunal orders an extension of the period of the suspension prior to its expiry upon both Parties’ request or a Party’s request to which the other Party does not object. 8. The Chairman shall suspend the proceedings pursuant to paragraph (1)(a) if the Arbitral Tribunal has not yet been constituted. The Parties shall inform the Chairman of the period of the suspension and any conditions agreed to by the Parties.   **Article 30 Withdrawal, Termination and Discontinuance**   1. A Party may withdraw its claim or counterclaim in its entirety. The Claimant’s withdrawal of its claim in its entirety or the Respondent’s withdrawal of its counterclaim in its entirety shall not affect the hearing and determination of the counterclaim or the claim by the Arbitral Tribunal. 2. Where both the claim and counterclaim have been withdrawn in their entirety, the Arbitral Tribunal, or the Chairman if the Arbitral Tribunal has not yet been constituted, may terminate the case. 3. Notwithstanding a withdrawal of its claim or counterclaim by a Party, the Arbitral Tribunal may proceed to render an arbitral award on the claim or counterclaim, if the hearing relating to that claim or counterclaim has been closed and the other Party disagrees with the withdrawal. 4. If, before the award is rendered, the Parties agree to discontinue the arbitral proceedings, the Arbitral Tribunal, or the Chairman if the Arbitral Tribunal has not yet been constituted, shall, at their written request, record the discontinuance of the proceedings in an order. 5. If a Party requests the discontinuance of the arbitral proceeding and the other Party does not object in writing within a time limit fixed by the Arbitral Tribunal or the Chairman if the Arbitral Tribunal has not yet been constituted, the Arbitral Tribunal or the Chairman if the Arbitral Tribunal has not been constituted shall record the discontinuance of the proceedings in an order. 6. If the Parties fail to take any steps in the proceeding during six consecutive months or such period as they may agree with the approval of the Arbitral Tribunal or of the Chairman if the Arbitral Tribunal has not yet been constituted, or if it becomes unnecessary or impossible to continue the arbitral proceedings for any reason, the Arbitral Tribunal or the Chairman if the Arbitral Tribunal has not yet been constituted may, after notice to the Parties, in an order take note of the discontinuance of the proceeding.   **Article 31 Closure of the Proceedings**   1. The Arbitral Tribunal shall, as promptly as possible, after consulting with the Parties and upon being satisfied that the Parties have no further material evidence to produce or submissions to make with respect to the matters to be decided in the award, declare the proceedings closed. The Arbitral Tribunal shall communicate such declaration to the Parties and to the BAC. 2. The Arbitral Tribunal may, on its own motion or upon application of a Party but before any award is made, re‐open the proceedings. The Arbitral Tribunal’s decision that the proceedings are to be reopened shall be communicated to the Parties and to the BAC. The Arbitral Tribunal shall close any re‐opened proceedings in accordance with paragraph 1.   **Article 32 Continuation of the Arbitral Proceedings with Majority of the Arbitral Tribunal**  In the event that, after the closure of the proceeding, an arbitrator on a three-member Arbitral Tribunal or the minority of the multi-member Arbitral Tribunal is unable to participate in the deliberations and render an award as a result of death or other reasons, the Chairman may replace the arbitrator(s) with a substitute arbitrator(s), pursuant to Article 16 of the Rules. Alternatively, provided that the Parties consent and with the approval of the Chairman, the two remaining arbitrators or the majority of the Arbitral Tribunal may continue with the arbitral proceedings and make decision(s) and/or an award.  **Article 33 Objections to Jurisdiction**   1. Any objection that the claim or counterclaim is not within the jurisdiction of the BAC or the Arbitral Tribunal, including an objection as to the existence or validity of the arbitration agreement, or as to the applicability of these Rules, shall be made in writing as early as possible. A Party shall file the objection no later than the expiration of the time limit fixed for the filing of the Counter-Memorial, or, if the objection relates to a counterclaim, for the filing of the Reply unless the facts on which the objection is based are unknown to the Party at that time in which case the objection shall be made within 30 days after the facts are known or should have been known to the Party. The Arbitral Tribunal may not accept an objection to jurisdiction raised by a Party beyond the aforementioned time limit unless the Arbitral Tribunal considers the delay justified. 2. A Party is not precluded from raising an objection to jurisdiction by virtue of the fact that it has nominated, or participated in the nomination of an arbitrator. 3. The Arbitral Tribunal shall have the power to rule on its own jurisdiction. However, if an objection to jurisdiction is raised by a Party before the Arbitral Tribunal is constituted, the Chairman may make a decision on whether the BAC manifestly has no jurisdiction based on *prima facie* evidence. Where the Chairman decides that the BAC manifestly has no jurisdiction, the case shall be dismissed. 4. Whether an arbitration agreement is contained in a contract, treaty, statute, regulation or other instrument, it shall be treated as an agreement independent of and separate from all other clauses of those instruments. The existence or validity of an arbitration agreement shall not be affected by any decision in relation to the existence or validity of the aforementioned instruments. 5. The Arbitral Tribunal may, on its own initiative or upon request from the Party that raises the objection, decide to suspend the proceeding on the merits and deal with the objection as a preliminary question. Before making the decision, the Arbitral Tribunal shall provide the other Party an opportunity to file observations on whether the objection should be dealt with as a preliminary question. 6. Where that the Arbitral Tribunal decides to deal with the objection as a preliminary question, it shall, after consulting the Parties, decide upon the written and/or oral procedure for adjudicating the objection to jurisdiction.   **Article 34 Early Dismissal**   1. A Party may apply to the Arbitral Tribunal for the early dismissal of a claim or counterclaim on the basis that such a claim or counterclaim is manifestly without legal merit or manifestly outside the jurisdiction of the Arbitral Tribunal. 2. The following procedure shall apply to an application for early dismissal:    1. a Party shall file an application for early dismissal in writing no later than 30 days after the constitution of the Arbitral Tribunal or within any other time limit agreed by the Parties, specifying the grounds on which the application is based and including a statement of the relevant facts, law and arguments, with any supporting documents;    2. the Arbitral Tribunal shall fix time limits for written or oral submissions, as required, on the application for early dismissal;    3. if a Party files the application for early dismissal before constitution of the Arbitral Tribunal, the Chairman shall fix time limits for written submissions on the application, so that the Arbitral Tribunal may consider the application promptly upon its constitution; and    4. the Arbitral Tribunal shall issue its decision on the application within 60 days after the latest of:       1. the constitution of the Arbitral Tribunal;       2. the last written submission on the application; or       3. last oral submission on the application. 3. If the Arbitral Tribunal decides that all claims or counterclaims are manifestly without legal merit or manifestly outside the jurisdiction of the Arbitral Tribunal, it shall render an award to that effect. Otherwise, the Arbitral Tribunal shall issue a decision on the application and fix a time limit necessary for the further conduct of the proceedings. The decision of the Arbitral Tribunal shall be without prejudice to the right of a Party to file an objection to jurisdiction pursuant to Article 33 or to argue subsequently in the proceedings that a claim or counter claim is without legal merit.   **Article 35 Provisional Measures and Emergency Arbitrators**   1. A Party may at any time request that the Arbitral Tribunal orders provisional measures to preserve that Party’s rights, including but not limited to measures to: 2. prevent action that is likely to cause current or imminent harm to that Party or prejudice to the arbitral process; 3. maintain or restore the status quo pending determination of the dispute; and 4. preserve evidence that may be relevant to the resolution of the dispute. 5. The following procedure shall apply: 6. the request shall specify the rights to be preserved, the measures requested, and the circumstances that require such measures; 7. the Arbitral Tribunal shall fix time limits for written or oral submissions, as required, on the request; 8. if a Party requests provisional measures before the constitution of the Arbitral Tribunal, the Chairman shall fix time limits for written submissions on the request, so that the Arbitral Tribunal may consider the request promptly upon its constitution; and 9. the Arbitral Tribunal shall issue its decision on the request within 30 days after the latest of: 10. the constitution of the Arbitral Tribunal; 11. the last written submission on the request; or 12. the last oral submission on the request. 13. In deciding whether to order provisional measures, the Arbitral Tribunal shall consider all relevant circumstances. The Arbitral Tribunal shall only order provisional measures if it determines that they are urgent and necessary. 14. The Arbitral Tribunal may order the Party requesting provisional measures to provide appropriate security in connection with the measure requested. 15. A Party must promptly disclose any material change in the circumstances upon which the Arbitral Tribunal ordered provisional measures. 16. The Arbitral Tribunal may at any time modify or revoke the provisional measures previously ordered, on its own initiative or at the request of a Party. 17. If the Parties expressly agree on the application of the Emergency Arbitrator Rules set forth in Appendix D to the Rules, a Party requiring emergency interim relief prior to the constitution of the Arbitral Tribunal may apply for such relief pursuant to the Appendix D. 18. The measures and procedures set out in paragraphs 1 to 7 inclusive are without prejudice to the rights of the Parties, based upon the applicable law, to apply to any competent court or other authority to order provisional measures.   **Article 36 Third‐Party Submissions**   1. The Arbitral Tribunal shall permit a Party to a treaty who is not a party to the dispute(s) (“non-disputing Treaty Party”) to make a written submission on a question of treaty interpretation that is directly relevant to the dispute. The Arbitral Tribunal may also, after considering the views of the Parties and having regard to the circumstances of the case, invite written submissions from a non‐disputing Treaty Party under this paragraph. 2. By written notice to the Chairman and the Parties, any person or entity that is not adisputing party (“non-disputing party”), including a non-disputing Treaty Party referred to in paragraph 1, may apply for permission to make written submissions regarding a matter within the scope of the dispute(s). The Arbitral Tribunal may also, after considering the views of the Parties and having regard to the circumstances of the case, invite written submissions from a non‐disputing party under this paragraph. 3. In determining whether to permit a non-disputing party submission under paragraph 2, the Arbitral Tribunal shall consider all relevant circumstances, including: 4. whether the submission would address a matter within the scope of the dispute; 5. whether and to what extent the submission would assist the Arbitral Tribunal to determine a factual or legal issue related to the proceedings by bringing a perspective, particular knowledge or insight that is different from that of the disputing Parties; 6. whether the non-disputing party has a significant interest in the proceeding and/or any other related proceedings; 7. whether and to what extent allowing the written submissions would violate the Parties’ right to confidentiality; 8. the identity, activities, organization and ownership of the non-disputing party, including any direct or indirect affiliation between the non-disputing party, a Party or a non-disputing Treaty Party; and 9. whether any person or entity will provide the non-disputing party with financial or other assistance to file the submission. 10. The Parties shall have the right to make observations on whether a non-disputing party should be permitted to file a written submission under paragraph 2 and on the conditions for filing such a submission, if any. 11. The Arbitral Tribunal shall ensure that non‐disputing Treaty Party submissions under paragraph 1 or non-disputing party submissions under paragraph 2 do not disrupt the proceedings or unduly burden or unfairly prejudice either Party. To this end, submissions under paragraphs 1 and 2 shall be filed no later than 60 days of the filing of the Counter-Memorial by the Respondent. The Arbitral Tribunal may impose further conditions on non-disputing party submissions, including with regard to: 12. the format, length or scope of the submissions; and 13. the payment of funds to defray the increased costs of the proceedings attributable to the non-disputing party’s participation. 14. The Parties shall have the right to make observations on submissions filed under paragraphs 1 and 2. 15. The Arbitral Tribunal shall decide which further written submissions shall be required from a non-disputing Treaty Party or a non‐disputing party that has filed submissions under paragraph 1 or 2. The Arbitral Tribunal shall fix the time limits for communicating such further submissions. 16. The Arbitral Tribunal may, if either Party so requests or the Arbitral Tribunal so decides, hold a hearing for a non‐disputing Treaty Party or a non‐disputing party to explain or be examined on its written submissions. 17. The Arbitral Tribunal may, after consulting the Parties, order that a non‐disputing Treaty Party or a non‐disputing party be provided with access to documents related to the proceedings, including submissions, evidence, orders and decisions, as may be necessary for its participation in the proceedings. The Arbitral Tribunal shall take appropriate measures to safeguard the confidentiality of information related to the proceedings. 18. The Arbitral Tribunal may refer to and rely on non‐disputing Treaty Party submissions under paragraph 1 and/or non-disputing party submissions under paragraph 2 in its orders, decisions and awards.   **Article 37 Mediation**   1. At any time before the issuance of the award, the Parties may jointly request the Arbitral Tribunal to mediate the dispute, or jointly request the BAC to mediate the dispute in another appropriate manner and procedure. In either case, the arbitral proceedings shall be suspended. 2. Where the Parties jointly request the Arbitral Tribunal for mediation, 3. The Arbitral Tribunal may mediate the case in a manner that it considers appropriate. The mediation proceedings shall be kept confidential. 4. Where the Parties have reached a settlement agreement through mediation by the Arbitral Tribunal, they may withdraw their claims and counterclaims (if applicable). Upon the request of the Parties, the Arbitral Tribunal may make an award recording the settlement. 5. The Arbitral Tribunal shall terminate the mediation if either Party so requests or if the Arbitral Tribunal considers that further mediation efforts would be futile. Unless otherwise agreed by the Parties, the Arbitral Tribunal shall resume the arbitral proceedings. Where both Parties jointly request the replacement of an arbitrator(s), a substitute arbitrator(s) shall be nominated or appointed in accordance with the procedure that applied to the nomination or appointment of the arbitrator(s) being replaced. The resulting additional costs shall be equally borne by the Parties. 6. Where the Parties jointly request the BAC to mediate the dispute in another appropriate manner and procedure, the following shall apply 7. where the Parties have reached a settlement agreement through mediation, they may withdraw their claims and counterclaims (if applicable). At the request of the Parties, the Arbitral Tribunal may make an award recording the settlement. 8. Unless otherwise agreed by the Parties, where mediation is not successful, the Arbitral Tribunal shall resume the arbitral proceedings. 9. Where mediation is not successful, neither Party may adduce evidence of any opinion, view or statement, of any proposal or proposition expressing acceptance or opposition by either Party, or any opinion, view or statement by the Arbitral Tribunal made in the process of mediation as grounds for any claim, defense or counterclaim in the subsequent arbitral proceedings, judicial proceedings, or any other proceedings.   **Article 38 Expedited Procedures**  The Parties may agree to expedite the arbitration in accordance with the Expedited Procedure Rules set forth in Appendix C to the Rules.  **Article 39 Third Party Funding**   1. “Third-party funding” is the provision of funds or other material support for the pursuit or defense of a proceedings, by a person or entity that is not a party to the dispute (“third-party funder”) to a Party to the proceedings. 2. Where a Party has a third-party funding arrangement, the Party shall file a written notice disclosing in sufficient detail: 3. the existence of the third-party funding; 4. the identity of the third-party funder and its ultimate controller (where applicable); 5. details of the interest of the third‐party funder and its ultimate controller (where applicable) in the outcome of the proceedings; 6. where an arbitrator has been nominated or appointed, the relationship, if any, between the third‐party funder and its ultimate controller (where applicable) and the arbitrator; and 7. whether or not the third‐party funder has committed to cover adverse costs liability. 8. The notice referred to in paragraph 2 shall be sent to the BAC by the Claimant or the Respondent at the same time as or immediately after the submission of the Notice of Arbitration or the Response to the Notice of Arbitration respectively, or upon concluding a third-party funding arrangement if the arrangement is concluded after the submission. 9. Each Party shall have a continuing obligation to disclose any changes to the information referred to in paragraph 2 occurring after the initial disclosure, including termination of the funding arrangement. 10. When making a decision on the costs of arbitration and other costs, the Arbitral Tribunal may take into account the existence of any third party funding arrangement, and whether the requirements set forth in the preceding paragraphs 2, 3 and 4 are complied with by the Party or Parties accepting the funds. Where a third‐party funder has not committed to undertake adverse costs liability, the Arbitral Tribunal may order the Party accepting the funds of the funder to provide appropriate security for costs. |
| **第五章 仲裁裁决**  **第四十条 适用法律规则**   1. 当事人对于仲裁案件的实体问题所应适用的法律或法律规则作出约定的，仲裁庭应从其约定。当事人未作约定的，仲裁庭可以适用其认为合适的法律或法律规则。仲裁庭在确定适用法律规则时，应考虑案件的相关情形，包括但不限于当事人国籍、争议措施的性质、所指控的违反等。 2. 除非当事人明确授权，仲裁庭不得担当友好调解人或依据公允善良的原则作出裁决。   **第四十一条 作出裁决的期限**   * + - 1. 裁决应在本规则第三十一条规定的审理终结之日起120日之内作出。       2. 经商双方当事人和主任，仲裁庭可以决定延长该期限但延长不应超过60日。     **第四十二条 裁决的作出**   * + 1. 裁决应以书面形式作出，并写明裁决作出日期及仲裁地。除非当事人另有约定，仲裁庭应说明裁决理由。     2. 除非当事人另有约定，仲裁庭可以决定在不同的时间就不同的问题分别作出部分裁决。仲裁庭的管辖权决定可以部分裁决的形式作出。     3. 仲裁庭由三人或多人组成的，裁决应依全体仲裁员或多数仲裁员的意见作出；仲裁庭未能达成多数意见的，裁决应依首席仲裁员的意见作出。持有不同意见的仲裁员的意见或声明应附在裁决之后，但不构成裁决的组成部分。仲裁庭的其他决定或命令也适用前述规则，但仲裁庭授权首席仲裁员就程序安排作出决定或命令的除外。     4. 仲裁庭由独任仲裁员组成的，裁决依独任仲裁员的意见作出。     5. 在裁决定稿前，仲裁庭应将裁决稿发送给各方当事人评论，并应设置当事人提交评论的时限。评论对仲裁庭不具约束力，但仲裁庭可在其认为必要时对评论给予适当考虑。当事人未按时提交评论不影响仲裁庭作出裁决。     6. 仲裁庭在签署裁决之前，应向本会提交裁决稿。本会可对裁决的形式提出建议，并可在不影响仲裁庭自主决定权的前提下，就其他问题提请仲裁庭注意。     7. 裁决应由仲裁员签署并加盖本会印章。持有不同意见的仲裁员可以签署，也可以不签署裁决。     8. 裁决一旦签署和盖章，本会应毫不迟延地将其发送给各方当事人。若当事人未能向本会缴清全部仲裁费用，本会可暂不发送裁决直至该等费用缴清。     9. 仲裁裁决是终局的，对各方当事人均具有拘束力，但当事人已依照第四十六条向本会提交各方当事人同意对裁决提起上诉的通知的除外。     10. 当事人已依照第四十六条向本会提交通知的，裁决在以下情况下是终局的，并对各方当事人具有拘束力：         - 1. 裁决作出已届满60日，且各方当事人均未就裁决提出上诉；或者           2. 在提出上诉的情况下，上诉程序已终止。   **第四十三条 和解**  在裁决作出前，各方当事人达成和解协议的，经各方当事人申请，仲裁庭可决定终止仲裁程序，或按照和解协议的内容作出仲裁裁决。仲裁庭可以不对该裁决说明理由。  **第四十四条 裁决的更正与解释**   1. 仲裁庭可以在裁决作出之日起30日内自行对裁决中的书写、打印或计算错误进行更正，或者就裁决的具体事项或特定部分作出解释。 2. 在收到裁决后30日内，当事人可以请仲裁庭就裁决中的书写、打印或计算错误进行更正，或者就裁决的具体事项或特定部分作出解释。如果仲裁庭认为该请求正当，应在给予其它当事人就该请求进行评论的机会后，在收到该请求后30日内进行更正或作出解释。 3. 裁决的更正或解释应以书面形式作出，构成裁决的一部分，并应符合本规则第四十二条规定。   **第四十五条 补充裁决**   1. 仲裁庭可以在裁决作出之日起30日内自行对仲裁案件中提出的但未予决定的仲裁请求作出补充裁决。 2. 当事人在收到裁决后30日内，可以请求仲裁庭对仲裁案件中提出的但未予决定的请求作出补充裁决。如果仲裁庭认为该请求正当，应在给予其它当事人就该请求进行评论的机会后，在收到该请求后30日内作出补充裁决。 3. 仲裁庭在其认为必要的情况下，可以请求本会对第（一）款和第（二）款所规定的时限予以延长。 4. 补充裁决应以书面形式作出，构成裁决的一部分，并符合本规则第四十二条的规定。   **第四十六条 裁决的上诉**   1. 经各方当事人书面同意，裁决可以依照本规则附件五上诉。 2. 欲提起上诉的当事人应尽早将前款所指的书面同意通知本会，且无论如何不应晚于仲裁庭确定的当事人就裁决稿提交评论意见的截止期限。 3. 欲提起上诉的当事人应当在裁决作出后60日内向本会书面提交上诉通知。 4. 各方当事人对于上诉事由、上诉程序及上诉裁决等事项的约定与本规则及本规则附件五的规定不同的，由主任决定本会是否受理依照该约定提出的上诉。   **第四十七条 仲裁费用**   1. 仲裁费用包括以下项目： 2. 仲裁庭的报酬和费用； 3. 紧急仲裁员（如有）的报酬和费用； 4. 仲裁庭任命的任何专家、证人的费用和报酬，及其它相关辅助项目的费用，以仲裁庭批准的额度为限；及 5. 仲裁庭助理（如有）的费用；和 6. 本会应收取的案件登记费和仲裁管理费。 7. 仲裁庭在作出裁决前应要求本会最终确定仲裁费，本会应根据仲裁程序开始之日现行有效的《费用表》（本规则附件一）最终确定仲裁费，并应考虑仲裁庭高效快捷处理案件的程度、争端的复杂性及其他有关情况。 8. 仲裁庭应在裁决中载明本会最后确定的仲裁费用金额及项目明细。 9. 除非当事人另有约定，仲裁庭可以应一方当事人的请求或依其自行决定，根据案件结果、各方当事人对仲裁程序的高效快捷进行所作出的贡献及其认为相关的其他情形，在裁决中确定各方当事人应承担的仲裁费用的比例及金额。 10. 如果仲裁程序在裁决作出前终止，本会应根据仲裁程序进展的阶段、仲裁庭的工作量以及本会认为必要的其他相关情形确定仲裁费用。 11. 各方当事人就仲裁费用向本会和仲裁庭承担连带责任。 12. 除非当事人另有约定，仲裁庭可以应一方当事人的请求或依其自行决定，根据案件结果、各方当事人对仲裁程序的高效快捷进行所作出的贡献及其认为相关的其他情形，裁定由一方当事人承担对方当事人因本仲裁而承担的包括律师代理费在内的全部或部分费用。   **第四十八条 预缴仲裁费用**   1. 本会应确定各方当事人应预缴的仲裁费用的金额及方式。 2. 除非本会另有决定或当事人另有约定，除案件登记费应由申请人依照本规则第五条第（四）款缴纳之外，申请人和被申请人应各自预缴一半仲裁费用。如果本会认为有必要，本会还可以要求当事人在仲裁程序进行中进一步预缴仲裁费用。 3. 一方当事人未能预缴仲裁费用的，本会应给予另一方当事人机会在指定时限内缴付仲裁费用。如果该另一方当事人未缴付该费用，本会应全部或部分撤销仲裁案件。如果该另一当事人支付了该项费用，仲裁庭可以应该当事人的请求作出部分裁决，要求另一当事人补偿该项费用。 | **Chapter V Arbitral Award**  **Article 40 Applicable Rules of Law**   1. The Arbitral Tribunal shall apply the law or rules of law agreed upon by the Parties. Failing such designation by the Parties, the Arbitral Tribunal may apply the law or rules of law it considers appropriate. When making decisions of applicable rules of law, the Arbitral Tribunal shall consider the relevant circumstances of the dispute, including but not limited to the nationality of the Claimant, the nature of disputed action(s) and the alleged breaches. 2. Unless otherwise expressly authorized by the Parties, the Arbitral Tribunal shall not decide the dispute *ex aequo et bono* or as *amiable compositeur*.   **Article 41 Time Limit for the Award**   1. The award shall be made no later than 120 days from the date the Arbitral Tribunal declares the arbitration proceedings closed in accordance with Article 31 of the Rules. 2. The Arbitral Tribunal, having consulting the Parties and the Chairman, may decide to extend this time limit for no more than 60 days.   **Article 42 Making of the Award**   1. The arbitral award shall be made in writing, and shall state the date on which it is made and the seat of arbitration. Unless otherwise agreed by the Parties, the Arbitral Tribunal shall state the rea­sons upon which the award is based. 2. Unless otherwise agreed by the Parties, the Arbitral Tribunal may decide to make partial awards on different issues at different times. A jurisdictional decision of the Arbitral Tribunal may be made in the form of a partial award. 3. Where the Arbitral Tribunal is composed of three or more members, the award shall be made on the basis of the unanimous or majority opinion of the arbitrators. Where the Arbitral Tribunal fails to reach a majority opinion, the award shall be made on the basis of the opinion of the presiding arbitrator. The opinions or statements of the dissenting arbitrator(s) shall be appended to the award, which shall not form a part of the award. The above-mentioned rules also apply to other decisions or orders made by the Arbitral Tribunal, except for decisions or orders on procedural arrangements made by the presiding arbitrator with the authorization of the Arbitral Tribunal. 4. Where the Arbitral Tribunal is composed of a sole arbitrator, the award shall be made be based on the decision of such arbitrator. 5. The Arbitral Tribunal shall, before finalizing an award, send a draft of it to the Parties for comments and fix a time limit for them to submit their comments. The Arbitral Tribunal shall not be bound to accept the comment(s), but may give appropriate consideration to such comment(s) where it considers this necessary. A Party’s failure to submit comments within the time limit shall not hinder the Arbitral Tribunal from rendering the award. 6. The Arbitral Tribunal shall submit the draft of the award to the BAC before signing it. The BAC may make suggestions on the form of the award, and may draw the Arbitral Tribunal’s attention to other matters in the award, without affecting the Arbitral Tribunal’s liberty of decision. 7. The award shall be signed by the arbitrators and shall bear the seal of the BAC. The dissenting arbitrator(s) may or may not sign the award. 8. Once an award has been signed and sealed, the BAC shall dispatch a copy of the award to each Party without delay. If the costs of arbitration have not been paid in full by the Parties, the BAC may withhold the award until such costs are paid in full. 9. The arbitral award shall be final and binding on the Parties at the date it is made, unless an agreement that the arbitral award may be appealed has been notified to the BAC in accordance with Article 46. 10. Where an agreement has been notified to the BAC in accordance with Article 46, the arbitral award shall become final and binding on the Parties when:     * 1. 60 days have elapsed from the date the award was made and neither Party has appealed against the award; or       2. in cases where an appeal is made, the appellate proceedings has been terminated.   **Article 43 Settlement**  If the Parties reach a settlement agreement before the award is made, the Arbitral Tribunal may, at the request of the Par­ties, decide to terminate the arbitral proceedings or make an award recording the settlement. The Arbitral Tribunal shall not be obliged to give reasons for such an award.  **Article 44 Correction and Interpretation of Award**   1. Within 30 days from the date of an award is made, the Arbitral Tribunal may correct any clerical, typographical or computational errors in the award or provide an interpretation of a specific point or part of the award on its own motion. 2. Within 30 days from the date of receiving an award, a Party may request that the Arbitral Tribunal to correct any clerical, typographical or computational errors in the award or provide an interpretation of a specific point or part of the award. The Arbitral Tribunal shall, if it considers the request justified and after giving the other Party an opportunity to comment on the request, make the correction or provide the interpretation within 30 days from the date of receiving the request. 3. Any correction or interpretation of an award shall be in wri­ting, form a part of the award, and shall comply with Article 42 of the Rules.   **Article 45**  **Supplementary Award**   1. Within 30 days from the date of an award is made, the Arbitral Tribunal may make a supplementary award on any claim presented in the arbitration but not determined in the award on its own motion. 2. Within 30 days from the date of receiving an award, a Party may request that the Arbitral Tribunal make a supplementary award on any claim presented in the arbitration but not determined in the award. The Arbitral Tribunal shall, if it considers the request justified and after giving the other Party an opportunity to comment on the request, make the supplementary award within 30 days from the date of receiving the request. 3. The Arbitral Tribunal may, where it considers necessary, request the BAC to extend the time limit stipulated in paragraphs 1 and 2. 4. The supplementary award shall be made in wri­ting, form part of the award, and comply with Article 42 of the Rules.   **Article 46 Appeal against Award**   * 1. An award may be appealed against in accordance with the Appendix E to the Rules if the Parties have so agreed in writing.   2. A Party wishing to appeal against the award shall notify the agreement referred to in paragraph 1 to the BAC as early as possible, and in any event, no later than the expiration of the time limit fixed by the Arbitral Tribunal for the filing of comments on the draft of the award.   3. A Party wishing to appeal against the award shall submit a Notice of Appeal in writing to the BAC within 60 days from the date on which the award is made.   4. Where the Parties have agreed with regard to issues including the cause of the appeal, appellate procedure and the award that are different from the provisions of the Rules and Appendix E to the Rules, the Chairman shall determine whether the BAC shall accept an appeal pursuant to such agreement.   **Article 47 Costs of Arbitration**   1. The costs of the arbitration shall include:    1. the fees and expenses of the Arbitral Tribunal;    2. the fees and expenses of the emergency arbitrator (where applicable);    3. the costs of any expert, witness appointed by the Arbitral Tribunal and of any other assistance reasonably incurred, subject to the amount approved by the Arbitral Tribunal;    4. the costs of the assistant to the Arbitral Tribunal (where applicable); and    5. the registration fee and administrative fee charged by the BAC. 2. The Arbitral Tribunal shall, before making the award, requests the BAC to finally determine the costs of the arbitration. The BAC shall do so in accordance with the BAC Fees Schedule (Appendix A to the Rules) in force at the date of commencement of the arbitration, having regard to the extent to which the Arbitral Tribunal has acted in an efficient and expeditious manner, the complexity of the dispute and any other rele­vant circumstances. 3. The Arbitral Tribunal shall include in the award the total sum of the costs of the arbitration as finally determined by the BAC and specify the costs for each item. 4. Unless otherwise agreed by the Parties, the Arbitral Tribunal may, at the request of a Party or on its own motion, determine in the award the division and amount of the costs of the arbitration between the Parties, having regard to the outcome of the case, each Party’s contribution to the efficiency and expeditiousness of the arbitration and any other circumstances it considers relevant. 5. If the arbitration proceedings are terminated before the award is made, the BAC shall determine the costs of the arbitration, having regard to the sta­ge of the arbitration, the work performed by the Arbitral Tribunal and any other relevant circumstances it considers necessary. 6. The Parties are jointly and severally liable to the Arbitral Tribunal and to the BAC for the costs of the arbitration. 7. Unless otherwise agreed by the Parties, the Arbitral Tribunal may, at the request of a Party or on its own motion, order a Party to pay any reasonable costs incurred by the other Party in whole or in part in this arbitration, including the costs for legal representation, having regard to the outcome of the case, each Party’s contribution to the efficiency and expeditiousness of the arbitration and any other circumstances it considers relevant.   **Article 48 Deposit of Costs of Arbitration**   1. The BAC shall determine the amount and method of the deposit of the costs of arbitration to be made by each Party. 2. Unless otherwise determined by the BAC or agreed by the Parties, and save that the Claimant shall pay a registration fee in accordance with Article 5 (4) of the Rules, the Claimant and the Respondent shall each make a deposit by equal halves. Where the BAC considers necessary, the BAC may require the Parties to make further deposit during the course of the arbitration proceedings. 3. If a Party fails to make a required deposit, the BAC shall provide the other Party an opportunity to make such deposit within a specified period of time. If the other Party fails to make such deposit, the BAC shall dismiss the arbitration case in whole or in part. If the other Party makes such deposit, the Arbitral Tribunal may, at the request of that Party, make a partial award for reimbursement of the deposit. |
| **第六章 最终条款**  **第四十九条 送达及期限**   1. 除非当事人另有约定或仲裁庭另有决定，当事人提交的所有书面陈述、通知、评论、通讯和其他材料以及仲裁庭或本会作出或转发的命令、决定、裁决、通讯和其他材料（合称为仲裁文件），均应采用本会与双方当事人协商后确定的电子方式送达。仲裁文件按照该电子方式发送的，视为有效送达。 2. 尽管有前款规定，仲裁通知、对仲裁通知的答复应依照第（三）款以非电子方式送达，除非当事人另有约定。应一方当事人请求，本会应依照第（三）款以非电子方式送达仲裁庭命令、决定和裁决的经认证副本。 3. 当事人约定或仲裁庭决定应以非电子方式送达仲裁文件的，可采用当面递交、挂号信、特快专递或其他能够提供投递记录的非电子方式送达。    1. 仲裁文件发送至当事人约定的或当事人或其仲裁代理人提供的地址的，视为有效送达。    2. 当事人对地址没有约定或当事人或其仲裁代理人没有提供地址的，仲裁文件经当面递交收件人或发送至收件人的营业地、注册地、住所地、惯常居住地或通讯地址，或者经当事人合理努力仍未能确定上述任一地点时，则以挂号信、特快专递或能提供投递记录的包括公证送达、委托送达和留置送达在内的其他任何手段投递给收件人最后一个为人所知的营业地、注册地、住所地、惯常居住地或通讯地址，即视为有效送达。 4. 依照第（一）至（三）款送达的仲裁文件，发出日期即为送达日期，但以电子方式送达的仲裁通知的送达日期为仲裁通知到达收件人电子地址的日期。 5. 当事人以非电子方式提交仲裁文件的，应向其他当事人、每位仲裁员及本会各提交一份。仲裁庭向当事人发出的任何仲裁文件都应提供一份给本会。仲裁庭可以就仲裁文件的发送方式及送达作出决定。 6. 本规则所规定的期限，应自当事人收到或应收到向其发送的仲裁文件之日的次日起计算。期间内的法定假期或非工作日应计入期间内。如果期间的届满日为收件人所在地的法定假期或非工作日，则期间届满日将顺延至之后的第一个工作日。   **第五十条 仲裁透明度**   1. 经各方当事人书面同意，《联合国国际贸易法委员会投资者与国家间基于条约仲裁透明度规则》（《贸法会透明度规则》）第三条至第七条的规定可以在仲裁中全部或部分适用，且可优先于本规则相关规定。 2. 各方当事人未就适用《贸法会透明度规则》达成协议的，仲裁通知、上诉通知（如适用）、仲裁庭和上诉庭（如适用）的命令、决定及裁决应予公开。公开的时间和方式由主任考虑案情后决定。   **第五十一条 免责**   1. 本会及本会工作人员、仲裁员、上诉庭成员、紧急仲裁员和仲裁庭指定的任何人士，包括仲裁庭助理和仲裁庭任命的专家，均不就与仲裁相关的行为或疏忽向当事人或其他任何人承担责任，除非仲裁所适用的法律另有规定。 2. 当事人不得要求前款所述的任何人员在任何与依据本规则由本会管理的仲裁案件相关的其他法律程序中担任证人。   **第五十二条 本规则的解释**   1. 本规则由本会解释。 2. 本规则附件为本规则的组成部分。 3. 除非本会另有声明，本会发布的任何其他文件不构成本规则的组成部分。 4. 本规则的条文标题不应被用于解释条文的含义。   **第五十三条 本规则的正式文本**  本会公布的本规则的中文、英文以及其他语文文本均为正式文本。  **第五十四条 本规则的生效**  本规则自【XXXX年X月X日】起施行。 | **Chapter VI Final Provisions**  **Article 49 Service and Time Limit**   1. Unless the Parties agree or the Arbitral Tribunal orders otherwise, all the written submissions, notices, observations, comments, communications and other materials filed by the Parties and all the orders, decisions, awards, communications and other materials issued or forwarded by the Arbitral Tribunal or the BAC (collectively referred to as arbitration documents) shall be delivered by electronic means in a manner determined by the BAC after consultations with the Parties. An arbitration document shall be deemed to have been properly served if it is delivered by the electronic means. 2. Notwithstanding paragraph 1, the Notice of Arbitration and the Response to the Notice of Arbitration shall be delivered by non-electronic means in accordance with paragraph 3, unless the Parties have agreed otherwise. At request of a Party, the BAC shall deliver certified copies of the orders, decisions and awards of the Arbitral Tribunal to that Party by non-electronic means in accordance with paragraph 3. 3. Where the Parties agree or the Arbitral Tribunal orders that arbitration documents shall be delivered by non-electronic means, those arbitration documents may be delivered in person or sent by registered mail or express mail or by any other non-electronic means that provides a record of the delivery.    1. Arbitration documents shall be deemed to have been properly served if they are sent to the address agreed by the Parties or the address provided by a Party or its representative(s).    2. Where the Parties have not agreed on an address or a Party or its representative(s) has not provided an address, arbitration documents shall be deemed to have been properly served if they are sent to the addressee’s place of business, place of registration, domicile, habitual residence or mailing address, or, where none of the aforementioned addresses can be identified after reasonable efforts by a Party, to the addressee’s last known place of business, place of registration, domicile, habitual residence or mailing address by registered mail or express mail, or by any other means that provides a record of the delivery, including but not limited to service by public notary, entrustment or retention. 4. An arbitration document served in accordance with paragraphs 1 to 3 shall be deemed to have been served on the date it is delivered, except that a Notice of Arbitration sent by electronic means shall be deemed to have been served on the date it reaches the addressee’s electronic address. 5. Where arbitration documents are delivered by non-electronic means, each Party shall supply one copy each to the other Party, the arbitrator(s) and the BAC. A copy of each arbitration document from the Arbitral Tribunal to the Parties shall also be supplied to the BAC. The Arbitral Tribunal may rule on the means of supply and service of the arbitration documents. 6. The time limit for service specified in the Rules shall begin to run from the date following the day when an arbitration document is received or should have been received by a Party. Official holidays or non-business days during the running of the period of time shall be included in the period of time. If the last day of such period of time is an official holiday or non-business day at the place of receipt, the period shall expire at the end of the first following business day.   **Article 50 Transparency of Arbitration**   1. Where the Parties have agreed in writing, Articles 3 to 7 of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration 2014 (“UNCITRAL Transparency Rules”) may be applied to the arbitration in whole or in part, and shall prevail over the relevant provisions of the Rules. 2. Where the Parties have no agreement on the application of the UNCITRAL Transparency Rules, the Notice of Arbitration, Notice of Appeal (if applicable), orders, decisions and the award of the Arbitral Tribunal and the Appellate Tribunal (if applicable) shall be made public. The timing and manner of such publication shall be decided by the Chairman taking into account the circumstances of the case.     **Article 51 Exclusion of Liability**   1. The BAC and any officers and employees of the BAC, any arbitrator, any member of the Appellate Tribunal, any emergency arbitrator and any person appointed by the Arbitral Tribunal, including assistant to the Arbitral Tribunal and expert appointed by the Arbitral Tribunal, shall not be liable for any negligence, act or omission in connection with any arbitration administered by the BAC in accordance with the Rules, unless the applicable law of the arbitration provides otherwise. 2. The Parties shall not require any of the persons referred to in the preceding paragraph to act as witness in any legal proceedings in connection with any arbitration administered by the BAC in accordance with the Rules.   **Article 52 Interpretation of the Rules**   1. The Rules shall be interpreted by the BAC. 2. The Appendices to the Rules shall constitute parts of the Rules. 3. Any other document issued by the BAC shall not constitute part of the Rules, unless the BAC states otherwise. 4. The headings to the articles of the Rules shall not be used for the interpretation of the contents of the articles.   **Article 53 Official Versions of the Rules**  Each of the Chinese, English and other language versions of the Rules published by the BAC is an official version.  **Article 54 Coming into Force of the Rules**  The Rules shall take effect as of [X XXX XXXX]. |
| **附件一 北京仲裁委员会/北京国际仲裁中心 国际投资仲裁收费表** | **Appendix A**  **Beijing Arbitration Commission/Beijing International Arbitration Center**  **Schedule of Fees for International Investment Arbitration** |
| **附件二 北京仲裁委员会/北京国际仲裁中心 国际投资仲裁程序时间表** | **Appendix B**  **Beijing Arbitration Commission/Beijing International Arbitration Center**  **Indicative Timetable for International Investment Arbitration** |
| **附件三 北京仲裁委员会/北京国际仲裁中心 国际投资仲裁快速程序** | **Appendix C**  **Beijing Arbitration Commission/Beijing International Arbitration Center**  **Expedited Procedures for International Investment Arbitration** |
| **附件四 北京仲裁委员会/北京国际仲裁中心 国际投资仲裁紧急仲裁员程序** | **Appendix D**  **Beijing Arbitration Commission/Beijing International Arbitration Center**  **Emergency Arbitrator Procedures for International Investment Arbitration** |
| **附件五 北京仲裁委员会/北京国际仲裁中心 国际投资仲裁上诉程序规则** | **Appendix E**  **Beijing Arbitration Commission/Beijing International Arbitration Center**  **Rules of Appeal Proceedings for International Investment Arbitration** |
| **附件六 北京仲裁委员会/北京国际仲裁中心 关于适用《联合国国际贸易法委员会仲裁规则》程序指引** | **Appendix F**  **Beijing Arbitration Commission/Beijing International Arbitration Center**  **Procedural Guidelines for Arbitration under the UNCITRAL Arbitration Rules** |