

ANNEX 12.A
RULES OF PROCEDURE FOR THE ARBITRATION PANEL PROCEEDINGS

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SECTION A
ARBITRATORS

Article 1
Self-Disclosure Obligations for Candidates

A candidate shall disclose in writing to the parties to the dispute any interest, relationship or matter that is likely to affect or give rise to justifiable doubts as to the candidate's independence or impartiality including relevant financial, business, professional, family, personal or social relationships or responsibilities. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters.

Article 2
Standards of Conduct

1. Upon selection, an arbitrator shall perform its duties thoroughly and expeditiously, and with fairness and diligence, throughout the course of the arbitration panel proceedings.
2. An arbitrator shall consider only those issues that are raised in the proceedings and that are necessary for a ruling and shall not delegate this duty to any other person.
3. An arbitrator shall be independent and impartial and avoid creating an appearance of impropriety or bias and shall not be, or appear to be, influenced by self-interest, including by financial, business, professional, family, personal or social relationships or responsibilities, outside pressure, political considerations, public clamour, loyalty to a Party or fear of criticism.
4. An arbitrator shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of his or her duties.
5. Once appointed and throughout the arbitration panel proceedings, an arbitrator shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to under Article 1 and shall disclose them in writing to the parties to the dispute.
6. Any party to the dispute which possesses or comes into possession of evidence of a material violation of the obligations of independence, impartiality or confidentiality or the avoidance of direct or indirect conflicts of interest by an arbitrator which may impair the integrity, impartiality or confidentiality of the

dispute settlement mechanism, shall at the earliest possible time submit such evidence to the arbitration panel and the parties to the dispute in a written statement specifying the relevant facts and circumstances.

7. The arbitration panel shall take all appropriate steps to ensure that their assistants and staff are aware of, and comply with Article 1 and this Article.

SECTION B PROCEEDINGS

Article 3 Operation of Arbitration Panel

1. The chair of the arbitration panel shall preside at all of its meetings. An arbitration panel may delegate to the chair of the arbitration panel the authority to make administrative and procedural decisions related to the arbitration panel proceedings. The chair of the arbitration panel shall be responsible for organising the proceedings unless otherwise agreed by the parties to the dispute.
2. Except as otherwise provided in these rules or in Chapter 12 (Dispute Settlement), the arbitration panel may conduct its activities by any means, including telephone, video conferencing or e-mails.
3. Only arbitrators may take part in the deliberations of the arbitration panel, but the arbitration panel may permit its assistants, administrative staff, interpreters and translators to be present during such deliberations.
4. The drafting of any decision or ruling shall remain the exclusive responsibility of the arbitration panel.
5. Where a procedural question arises that is not covered by these rules or Chapter 12 (Dispute Settlement), an arbitration panel may, after consultation with the parties to the dispute, adopt an appropriate procedure that is consistent with the Agreement.
6. Unless otherwise agreed by the parties to the dispute, an arbitration panel may, in consultation with the parties to the dispute, modify any time period established pursuant to Chapter 12 (Dispute Settlement) and these rules and make such other procedural or administrative adjustments as may be required in the arbitration panel proceedings. Prior to such consultation with the parties to the dispute, the arbitration panel shall inform them of the reasons for the intended modification or adjustment with an indication of the period or adjustment needed.

Article 4
Commencing the Arbitration

1. Unless the parties to the dispute otherwise agree, they shall meet with the arbitration panel within 10 days following the establishment of the arbitration panel in order to discuss such matters pertaining to the arbitration panel proceedings as the parties to the dispute or the arbitration panel deem appropriate, including the administration of and the timetable for the arbitration panel proceedings, procedures for the hearing and the remuneration and expenses that shall be paid to the chair of the arbitration panel.
2. The arbitration panel shall, as soon as practicable and whenever possible within five days after the meeting with the parties to the dispute, determine the timetable for the arbitration panel proceedings.
3. The arbitration panel shall keep a record and render a final account of all its expenses incurred in connection with the proceedings, including those paid to their assistants, or other individuals that it retains in consultation with the parties to the dispute.

Article 5
Written Submissions and Hearings

1. The complaining Party shall deliver its initial written submission no later than 15 days after the date of establishment of the arbitration panel. The Party complained against shall deliver its written counter-submission no later than 25 days after the date of delivery of the initial written submission.
2. Within 15 days after the date of the hearing, each party to the dispute may deliver a rebuttal submission and any supplementary written statement responding to any matter that arose during the hearing.
3. Each party to the dispute shall have the right to at least one hearing before the panel. The arbitration panel may decide to convene additional hearings.
4. Unless the parties to the dispute agree otherwise, the chair of the arbitration panel shall determine the date and time of the hearing in consultation with the parties to the dispute and the other members of the arbitration panel. The parties to the dispute shall be notified in writing thereof.
5. All arbitrators shall be present at all hearings.
6. No later than two days before the date of a hearing, each party to the dispute shall deliver to the other party to the dispute and the arbitration panel a list of the names of its representatives or advisers who will be attending the hearing together with a list of any witnesses that will participate.
7. The following persons may attend the hearing, irrespective of whether the proceedings are open to the public or not:

- (a) representatives of a party to the dispute, meaning any employee or person appointed for the purpose of arbitration proceedings by a party to the dispute; and
 - (b) necessary personnel to assist in the arbitration panel proceedings, including staff, interpreters, translators, court reporters and arbitrators' assistants.
- 8. The hearings shall be so conducted that the complaining Party and the Party complained against are afforded equal time.
- 9. The arbitration panel shall arrange for a transcript of each hearing to be prepared and shall, as soon as possible after it is prepared, deliver a copy of the transcript to the parties to the dispute.

Article 6
No ex parte Communication

- 1. The arbitration panel shall not meet or discuss matters under consideration with a party to the dispute in the absence of the other party to the dispute.
- 2. No arbitrator shall discuss matters under consideration with any or all parties to the dispute in the absence of the other arbitrators.

Article 7
Questions in Writing

- 1. The arbitration panel may at any time during the arbitration panel proceedings address questions in writing to the parties to the dispute. Each party to the dispute shall receive a copy of any questions put forward by the arbitration panel, and the written responses thereto.
- 2. The party to the dispute that is not the addressee of the questions shall be given the opportunity to provide written comments on the reply of the other party to the dispute within ten days after the date of receipt.

Article 8
Arbitrators' Resignation, Removal or Inability to Act

If an arbitrator resigns, is removed or is unable to act, the arbitration panel shall, after the appointment of a new arbitrator and after consulting the parties to the dispute, decide on any necessary modifications to their working procedures or timetable, including whether a hearing should be repeated in whole or in part.

SECTION C
GENERAL PROVISIONS

Article 9
Notifications

1. A written submission, request, notice or other document shall be considered received when it has been delivered against receipt, registered post, courier, facsimile, electronic transmission, or any other means of communication that provides a record of the sending thereof.
2. A Party's written communications shall, at the same time as it is submitted to the arbitration panel, be transmitted by that Party to the other party to the dispute. A copy of the written communication shall be provided in electronic format.
3. Minor errors of a clerical nature in any written submission, request, notice or other document related to the arbitration panel proceedings may be corrected by delivery of a new document clearly indicating the changes.

Article 10
Confidentiality

1. The parties to the dispute, the arbitrators and any other individuals involved in the arbitration proceedings shall treat as confidential any information submitted to the arbitration panel and designated as confidential.
2. During open hearings and where a party to the dispute runs the risk of disclosing confidential information, adequate measures shall be adopted by the arbitration panel to maintain the confidentiality of such information.
3. Where a party to the dispute submits a confidential version of its written submissions to the arbitration panel it shall, at the request of the other party to the dispute, also provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public no later than 15 days after the hearings.
4. Nothing in these rules shall preclude any party to the dispute from disclosing statements of its own positions to the public.

Article 11
Third Party Participation

These rules shall apply *mutatis mutandis* to any Party participating in the arbitration panel proceedings pursuant to paragraph 5 of Article 12.4 of the Agreement, unless otherwise specified in the Agreement or these rules.

Article 12
Language

1. The working language of the dispute settlement proceedings shall be English.
2. Written submissions, documents, oral arguments or presentations at the hearings, initial and final reports of the arbitration panel, as well as all other written or oral communications between Parties and the arbitration panel, shall be in the working language.

Article 13
Calculation of Time Periods

1. All time periods laid down in Chapter 12 (Dispute Settlement) and these rules shall be calculated from the day following the day when the communication is received. If the last day of such period is an official holiday or a non-working day in the Party to which the communication is addressed, the period is extended to the next working day. The parties to the dispute shall inform each other of their respective official holidays and non-working days when commencing the arbitration.
2. Where a party to the dispute receives a document on a date other than the date on which the same document is received by the other party to the dispute, a time period depending on such receipt shall be calculated from the later date.

Article 14
Experts

At the request of a party to the dispute or on its own initiative, the arbitration panel may seek information and technical advice from any individual or body which it deems appropriate and may consult with the parties to the dispute prior to seeking such information and advice. The parties to the dispute shall be informed in writing thereof. Any information or technical advice so obtained shall be submitted to the parties to the dispute, who shall be offered the opportunity to comment.
