



# IDAC INDIA'S INTERNATIONAL ARBITRATION RULES - 2020



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## **IDAC INDIA's International Arbitration Rules.**

**Effective from 17/08/2020 onwards**

### **Introduction:**

IDAC India suggests to all parties, desirous of making reference to arbitration by the IDAC India, the use of the following arbitration clause in writing in their contracts:

**"Any dispute or difference whatsoever arising between the parties out of or relating to the construction, meaning, scope, operation or effect of this agreement or the validity or the breach thereof shall be settled by arbitration in accordance with the Rules of International Commercial Arbitration of the IDAC India read with Uncitral Arbitration Rules and the award made in pursuance thereof shall be final and binding on the parties."**

### **Article 1. Scope of Application and Interpretation**

When parties of different Nations have agreed in writing to submit, refer, specify to arbitrate their disputes in accordance with this Rules, such disputes shall be settled or resolved by arbitration in accordance with this Rules.

The arbitration shall be conducted and administered by IDAC India in accordance with the Rules.

1) An arbitration is international if:

- a) The parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or
- b) One of the following places is situated outside the State in which the parties have their places of business:
  - I. The place of arbitration if determined in, or pursuant to, the arbitration agreement;
  - II. Any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with

which the subject-matter of the dispute is most closely connected; or

- c) The parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.
- 2) For the purposes of paragraph (3) of this article:
  - a) If a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement;
  - b) If a party does not have a place of business, reference is to be made to his habitual residence.
- 3) This Law shall not affect any other law of this State by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Law.

## **Article 2. Definitions:**

- a) "Act" means The Arbitration and Conciliation Act 1996 including any amendment or re-enactment thereof.
- b) "Arbitration Costs" means costs relating to the fees of the arbitrators and expenses including expenses on account of travelling, boarding and lodging of the arbitrators and witnesses, experts, administrative charges including stamp duty charges, legal charges and fees, conference hall charges, conveyance, refreshments, photocopying and all other expenses incurred in connection with the arbitral proceedings and the award.
- c) "Claimant" means the party initiating an arbitration;
- d) "Respondent" means the party against which the arbitration is initiated, as named in the Request for Arbitration;
- e) "Tribunal" the arbitral tribunal and includes a sole arbitrator or all the arbitrators where more than one is appointed;
- f) "Business Day" means all days from Monday to Friday and "Non-business Day" means Saturday, Sunday and includes any other day which is a public holiday as declared by Government of Gujarat/Government of India.
- g) "Claim" or "Claims" include any Claim made by one party against the other including the Counter Claim.
- h) "Centre" means the International and Domestic Arbitration Centre India (IDAC India).

- i) "International Commercial Arbitration" means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is;
  - i. An individual who is a national of, or habitually resident in any country other than India; or
  - ii. A body corporate, which is incorporated in any country other than India; or
  - iii. An association or a body of individuals or a partnership firm, whether incorporated or not, whose central management and control is exercised in any country other than India; or
  - iv. The Government of a foreign country.
- j) "Panel" means the Panel of Arbitrators maintained by the IDAC India and empanelled as per IDAC India's Empanelment Policy & Regulations for Empanelment.
- k) "Empanelment Policy" means IDAC India's policy for Empanelment of Arbitrators effective as of 31st December 2020.
- l) "Regulation for Empanelment of Arbitrators" means the comprehensive administrative guide for empanelment of Arbitrators which along with the Empanelment Policy forms the Rules for Empanelment of Arbitrators at IDAC India.
- m) "Empanelment Committee" constituted as per Regulations of Empanelment of IDAC India is the approving authority for new empanelment requests received by IDAC India
- n) "Party" means a party to an arbitration agreement.
- o) "Secretariat" means the body constituted to handle the day-to-day working and affairs of IDAC India, including the management of Arbitration cases
- p) "IDAC Rules" refers to International Arbitration Rules of IDAC India read with UNCITRAL Arbitration Rules.
- q) "Arbitration Agreement" means an agreement in writing by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them; an Arbitration Agreement may be in the form of an arbitration clause or in the form of a separate contract;

- r) "Award" means decision of the Tribunal on a particular dispute and includes an interim final Award or an Award of an emergency arbitrator.
  - s) "Chairman" means the Chairman of IDAC India.
  - t) "Director" means the Directors of IDAC India
- Any pronoun shall be understood to be gender-neutral.  
Words in singular form include, where the context admits or requires, the plural number and vice versa.

### **Article 3. Written Notification or Communication;**

1. All communications from any party or arbitrator to the Centre shall be addressed to IDAC India.
2. Any notice, documentation or other communication submitted by any party to IDAC India shall be sent in a number of copies equal to the number required to provide one copy for each arbitrator, one copy for the other party or parties and one for IDAC India until such time as the Tribunal is constituted
3. After the notification by IDAC India of the establishment of the Tribunal, all communications between the Tribunal and the parties shall take place directly between them (with simultaneous copies to IDAC India).
4. For the purpose of these Rules all notifications, statements and other communications as well as all documentation annexed thereto shall be directed to the addresses of the parties provided by them to IDAC India and shall be deemed to have been received if physically delivered to the addressee or its representative at his habitual residence, place of business, mailing address, or if none of these can be found after making reasonable inquiry then at the addressee's last known residence or place of business.
5. Such notification or communication shall be in writing and shall be delivered by registered post or courier service or transmitted by email or any other means of telecommunication that provides a record of transmission.
6. A notification or other communication shall be deemed to have been made on the day it is received or, in the case of telecommunications, transmitted in accordance with the preceding paragraph, so long as it is received or transmitted before 6 pm in the country in which the communication was received, otherwise it shall be deemed to have been received on the following day.



7. For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice or other communication is received or deemed to be received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.
8. The Tribunal shall send to IDAC India a copy of each order, award or other decision that it makes.

#### **Article 4. Waiver**

A party, which knows that any provision of, or requirement under these Rules, or other rules applicable to the proceedings, or any direction given by the Tribunal, has not been complied with, and yet proceeds with the arbitration without promptly raising an objection to such non-compliance, shall be deemed to have irrevocably waived its right to object.

#### **Article 5. Definition and Form of Arbitration Agreement**

1. "Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
2. The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of communication through letters or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defense in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.



## **Article 6. Separation, Determination of Existence and Validity of Arbitration Agreement**

1. Unless otherwise agreed by the parties, an arbitration Agreement which forms or was intended to form part of another agreement shall not be regarded as invalid, non-existent or ineffective because that other agreement is invalid, or did not come into existence or has become ineffective, and the arbitration Agreement shall for that purpose be treated as a distinct agreement.
2. If any party raises one or more pleas concerning the existence, validity, scope or applicability of the arbitration agreement, then IDAC India may decide, without prejudice to the admissibility or merits of the plea or pleas that the arbitration shall proceed if it is prima facie satisfied that an arbitration agreement might exist under the Rules. In such a case, any decision as to the jurisdiction of the Tribunal shall be taken by the Tribunal itself. If IDAC India is not so satisfied, the parties shall be notified that the arbitration cannot proceed. In such a case, any party retains the right to ask any court having jurisdiction whether or not there is a binding arbitration agreement.

## **Article 7. Advance Cost/Deposits:**

1. IDAC India may direct the parties to deposit certain amounts towards the cost of the arbitration in advance. Such deposits shall be held by IDAC India and shall be released towards payments accrued during the course of the arbitration.
2. The Arbitral Tribunal's reasonable out-of-pocket expenses necessarily incurred and other allowances shall be borne equally by parties in dispute.
3. The total cost of the arbitration shall be equally borne by the parties to the arbitration.
4. Failure by the Claimant to deposit the required fee within the time stipulated by IDAC India shall amount to withdrawal of the claim.
5. Failure by the respondent to deposit the required fee within the time stipulated by IDAC India shall amount to withdrawal of the counter claim, if any.
6. In case, if the respondent does not deposit the fee within time stipulated by IDAC India towards the claim amount, the claimant has to deposit the same with IDAC India as and when called upon to do so and include the amount in their claim at any stage of the proceedings.

7. IDAC India may direct the parties to pay further deposits as and when required during the course of the arbitral proceedings. IDAC India may direct the Tribunal to suspend proceedings if the Parties fail to pay the deposits on time
8. All deposits shall be made to and held by the IDAC and no payment shall be made to the Arbitrator(s) directly by the Parties. Any interest which may accrue on such deposits shall be retained by the IDAC.
9. If the arbitration is settled or disposed of without a hearing, the costs of arbitration shall be finally determined by IDAC India. IDAC India shall have regard to all the circumstances of the case, including the stage of proceedings at which the arbitration is settled or disposed. In the event that the costs of arbitration determined are less than the deposits made, there shall be a refund in such proportions as the parties may agree, or failing an agreement, in the same proportions as the deposits were made.
10. If the arbitration is either withdrawn or terminated by the act or default of any parties after constitution of the arbitral tribunal, any fee, charges, deposited by the Parties shall not be refundable.

### **Article 8. Applicable Law and Jurisdiction of Court:**

1. The Arbitral Tribunal shall apply the Rules of Law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the Arbitral Tribunal shall apply Indian law. The arbitration proceedings governed by Indian Law shall have Seat of Arbitration at Delhi and the Courts at these places only shall have Jurisdiction to entertain any matter of dispute between the parties.
2. The parties may agree on any substantive law governing the contract, failing which the applicable law will be Indian law. If the substantive law, agreed upon between the parties, is in any other language than English then the Authenticated version of the said such law in English Language shall be submitted by the parties in dispute to IDAC India.
3. The Procedural law governing the Arbitration shall be the law of seat chosen by parties-In case where the seat of arbitration is not chosen by the parties, the seat of arbitration shall be New Delhi and the procedural law and law governing the arbitration agreement shall be the laws of India.

4. The Arbitral Tribunal shall decide as amiable compositor only if the parties have expressly authorized the Tribunal to do so.

In all cases, the Arbitral Tribunal shall decide in accordance with the terms of the contract, if any, and shall consider and account for any custom, usages applicable to the transaction.

## **Article 9. Commencement of Arbitration Proceedings**

### **❖ Request for Arbitration**

1. Any party wishing to commence an arbitration under the IDAC Rules shall send to IDAC India a written request for arbitration ("the Request") which shall include:
  - a) A demand that the dispute be referred to arbitration under the IDAC Rules
  - b) The name in full, description and address, including telephone, email address and other communication references of each of the parties to the arbitration and of the representative of the Claimant;
  - c) A copy of the Arbitration Agreement invoked by the Claimant, together with a copy of the contractual documentation in which the Arbitration Agreement is contained or in respect of which the arbitration arises;
  - d) A brief description of the nature and circumstances of the dispute giving rise to the claim;
  - e) A preliminary statement of the relief sought and, to the extent possible, an indication of any amount(s) claimed; and
  - f) All relevant particulars concerning the number of arbitrators and their choice in accordance with Article 11, and if the Arbitration Agreement calls for party nomination of arbitrators, the name, address, telephone and facsimile numbers and email address (if known) of the Claimant's nominee.
2. The Request may also include:
  - a) Whether request for Arbitration is for Expedited Arbitration or otherwise. If for expedited arbitration IDAC may in its discretion lay down time limit under these rules for formation of the Expedited

- Tribunal, including service of the answer and of any matters or documents adjudged to be not forming part of the request.
- b) The Statement of Claim referred to in Article 12;
  - c) A proposal as to the place of arbitration and the language of the arbitration; and
  - d) Any comments as to the applicable rules of law.
3. The Request (including all accompanying documents) shall be submitted to IDAC India in the number of copies required by Article 3(2) above.
  4. Together with the Request, the Claimant shall make payment of the Registration Fee required by Appendix - Cost of Arbitration in force on the date the Request is submitted. In the event that the Claimant fails to comply with this requirement, the Request shall be deemed invalid.
  5. IDAC India shall send a copy of the Request and the documents annexed thereto to the Respondent.
  6. The arbitral proceedings shall be deemed to have commenced on the date on which the Notice of arbitration is received by the Respondent.

### **Article 10. Emergency Arbitrator:**

1. If a party requires an urgent interim relief, that cannot await formation of the Arbitral Tribunal, it may make an application for emergency interim relief. The party shall notify IDAC India with a simultaneous copy thereof to the other parties to the arbitration agreement for such measures.
2. The party making such an application shall:
  - a) Describe the circumstances and the nature of the urgency and the relief sought
  - b) File proof of service of such application upon the opposite parties.
3. The party invoking the provision of Emergency Arbitrator shall deposit the necessary fees prescribed in the relevant schedule of fee within 7 days from the date of demand made by IDAC India.
4. IDAC India shall appoint the Emergency Arbitrator as soon as possible but not later than 10 days from the date of receipt of the fee as above.
5. The Emergency Arbitrator so appointed shall schedule a hearing including filing of pleadings as soon as possible but not later than 5 days of his appointment. The Emergency Arbitrator shall provide reasonable opportunity of being heard

- to all the parties and upon being satisfied shall have the power to pass an interim order as provided under Article 30.
6. IDAC India shall ensure that the entire process from the appointment of the Emergency Arbitrator to making the Order shall be completed within thirty days (excluding non- business days).
  7. The Emergency Arbitrator shall become Functus-officio after the Order is made.
  8. The order for urgent interim relief passed by the Emergency Arbitrator shall not bind the Arbitral Tribunal on the merits of any issue or dispute that the said Arbitral Tribunal may be required to determine.
  9. An order or award pursuant to the appointment of Emergency Arbitrator shall be binding on the parties when rendered. By agreeing to arbitration under these Rules, the parties undertake to comply with such an order or award without delay.
  10. The order passed by the Emergency Arbitrator shall remain operative unless modified, substituted or vacated by the Arbitral Tribunal.
  11. The Emergency Arbitrator for all purpose shall be treated as ad hoc Arbitral Tribunal

### **Article 11. Formation of Tribunal**

1. The parties are free to determine the number of arbitrators, provided that such number shall not be an even number.
2. Sole Arbitrator
  - (a) Where the agreement provides for appointment of a Sole Arbitrator, either party may propose to the other, names of one or more persons, one of whom would serve as the Sole Arbitrator.
  - (b) If the parties fail to agree on the person to be appointed as Sole Arbitrator within 21 days of the receipt of notice of arbitration by the Respondent, or if at any time either party so requests, the Sole Arbitrator shall be appointed by IDAC India from IDAC India's Panel of Arbitrators
3. Three Arbitrators –
  - (a) If three arbitrators are to be appointed, each party shall nominate one arbitrator from the panel of IDAC India's Arbitrators.

- (b) If any of the parties fails to make the nomination of an arbitrator within 30 days of the receipt of notice of arbitration by the Respondent, IDAC India shall proceed to appoint the arbitrator on his or their behalf.
  - (c) Unless the parties have agreed upon another procedure for appointing the Presiding Arbitrator, or if such agreed procedure does not result in a nomination of Presiding Arbitrator within 30 days of the commencement of the arbitration proceedings, the Presiding Arbitrator shall be appointed by IDAC India from IDAC India's Panel of Arbitrators.
4. Multi party Appointment of Arbitrator(s)
- (a) Where there are more than two parties in the arbitration and a Sole Arbitrator is to be appointed, all parties shall jointly nominate a Sole Arbitrator. In the absence of such a joint nomination having been made within 30 days of the receipt of notice of arbitration by the Respondent, IDAC India shall appoint the Sole Arbitrator from IDAC India's Panel of Arbitrators.
  - (b) Where there are more than two parties as Claimant and Respondent in the arbitration, and three arbitrators are to be appointed, the Claimant(s) shall jointly nominate a Sole Arbitrator and the Respondent(s) shall jointly nominate one arbitrator. In the event, any of the parties fails to make the joint nomination within 30 days of the receipt of notice of arbitration by the Respondent, IDAC India shall appoint a arbitrator or arbitrators as the case may be and shall also appoint a Presiding Arbitrator from IDAC India's Panel of Arbitrators.
5. However, where the parties are of different nationalities, a sole arbitrator or Presiding Arbitrator shall not have the same nationality as of any of the parties unless the parties who are not of the same nationality as the proposed arbitrator and all agree otherwise in writing.
6. For the purpose of this Article, a person who is a citizen of two or more states shall be treated as a national of each state.
7. Failing the determination referred to in sub-rule (1), the Tribunal shall consist of a Sole Arbitrator.
8. The terms of appointment of each arbitrator shall be fixed by IDAC India in accordance with these Rules.



9. The Arbitral Tribunal shall be deemed to have entered on the reference on the day on which the arbitrator or all the arbitrators, as the case may be, have received notice in writing of their appointment from IDAC India after extinguishing the challenge to their appointment, if any, made.
10. IDAC India shall send copies of all papers relating to arbitration such as claim statement, defense statement, counter claims, reply, statements, or other documents received from the parties to the dispute to the Arbitrator/s constituting the Arbitral Tribunal with a request to proceed with the arbitration.

## **Article 12. Statement of Claim**

1. Unless the statement of claim was submitted with the request or the parties with the consent of the Tribunal have agreed otherwise, the Claimant shall, within 30 days of receipt of notification from the Centre of the appointment of the Tribunal, submit its statement of claim to the Respondent and to the Tribunal with a copy to IDAC India as provided in Article 3.3.
2. The statement of claim shall contain a comprehensive statement of the facts and reference to the documents supporting the claim, including a statement of the relief sought.
3. The statement of claim shall be accompanied by the documentary evidence upon which the Claimant intends to rely, together with a schedule of such documents.

## **Article 13. Statement of Defense**

1. The Respondent shall, within 30 days of receipt of the statement of claim or according to the parties' agreement with the Tribunal, submit its statement of defense to the Claimant and to the Tribunal with a copy to IDAC India as provided in Article 3.3.
2. The statement of defense shall be accompanied by the documentary evidence upon which the Respondent intends to rely together with a schedule of such documents.
3. Any counterclaim by the Respondent shall be made or asserted in the statement of defense or, in exceptional circumstances, at a later stage in the arbitral proceedings if so decided by the Tribunal. Any such counterclaim shall



contain the same particulars and documentary evidence as those specified in Article 12 (2) and 12 (3).

4. The Respondent while submitting its Statement of defense and Counterclaim, if any, the Respondent shall also make payment of the Registration Fee required by Appendix - Cost of Arbitration in force on the date the Answer is submitted together with its Answer. In the event that the Respondent fails to comply with this requirement, the submission of the counterclaim shall be invalid, if the claimant does not accept the responsibility of making the payment for the counter claims as well with such reservation about the recovery of this fee as it may deemed fit.

#### **Article 14. Further written Statement**

1. The Tribunal may, in its discretion, allow or require further written statements in addition to the statement of claim and statement of defense and shall fix the periods of time for submission of such statements.
2. In the event that a counterclaim has been made or asserted, the Claimant shall reply to the particulars thereof. The time limits set out in Article 13 (1) shall apply to such reply.
3. The periods of time fixed by the Tribunal for the communication of written statements (including the statement of claim and statement of defense) should not exceed forty-five days unless otherwise directed by the Tribunal having consulted with the parties.

#### **Article 15. Representation**

1. The parties may be represented or assisted by an Attorney, Advocate and/or persons of their choice, irrespective of, in particular nationality or professional qualification. The names, addresses and telephone, e-mail other communication references of such representatives shall be included in the Request and/or the Answer, as required by Articles 9 and 13 above.
2. Each party shall ensure that its representatives have sufficient time available to carry out their duties and enable the Arbitral Tribunal to proceed expeditiously.
3. At any time the Tribunal may require from any party proof of authority granted to its representative(s) in such form as the Tribunal may determine.

## **Article 16. Seat / Place of Arbitration:**

The parties may agree on the seat of arbitration. Where there is no agreement as to the seat, the seat of arbitration shall be Delhi, unless the arbitral tribunal determines, having regard to the circumstances of the case, that another seat is more appropriate.

In case, if seat chosen by the party is leading to a legal hurdle with regard to enforceability then the Arbitral Tribunal shall have the power to determine the appropriate seat of arbitration. The venue of Arbitration shall be jointly agreed upon by the parties.

## **Article 17. Language of Arbitration:**

The documents and the language to be used in the arbitration proceedings and before the Arbitral Tribunal shall be English. If any document(s) filed by a party are in language other than English, the party filing such documents shall simultaneously furnish an English translation of the documents duly authenticated in the manner as may be directed by the Arbitral Tribunal.

## **Article 18. Ground/Challenge of Arbitrators:**

1. When a person is approached in connection with his possible appointment as an arbitrator, he/she shall disclose in writing any circumstances likely to give rise to justifiable doubts as to his/her independence or impartiality
2. The arbitrator while making the aforesaid disclosure should take notice of the grounds enumerated in the Fifth Schedule of the Arbitration and Conciliation Act 1996 or such other schedule of amendment as may be made from time to time in respect thereof.
3. Any person, whose relationship with the parties or counsel or the subject matter of the dispute falls under any of the categories specified in the Seventh Schedule of the Arbitration and Conciliation Act 1996, shall be ineligible to be appointed as an arbitrator provided that the parties may waive the applicability of the categories provided in the Seventh Schedule or such other schedule or amendment as may be made from time to time by an express agreement in relation to the appointment of arbitrators.
4. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the parties in writing any

- circumstance referred to in sub-rule (1) of Article 18 above unless they have already been informed of them by him.
5. An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his independence or impartiality.
  6. A party may challenge an arbitrator appointed by him or by another party, or in whose appointment he has participated, only for reasons which he becomes aware after the appointment has been made.
  7. Notice of such challenge shall be filed with IDAC India within 10 days after receipt of notice of the constitution of the Tribunal or within 10 days after the circumstances referred in Article 18 (3) become known to the party and shall be sent simultaneously to the other party, the arbitrator in question and the other Members of the Tribunal.
  8. The notice of challenge shall be in writing and shall state the reasons for the challenge. The challenge by one party to the appointment of an arbitrator may be agreed to by the other party. The challenged arbitrator may also resign or withdraw from office. However, this will not in any way be deemed to be an acceptance of the validity of the grounds of challenge.
  9. However, if within 8 days of the receipt of notice of challenge, the other party does not agree to the challenge and/or the arbitrator who is being challenged, does not withdraw voluntarily, IDAC India shall be the sole judge of the grounds of challenge and its decision shall be final and binding on the parties.

### **Article 19. Removal of Arbitrator:**

1. IDAC India may in its discretion, direct the removal of an arbitrator, who refuses or fails to act or becomes de jure or de facto unable to perform his functions or if he is not fulfilling his functions in accordance with the Rules or within the prescribed time limits.
2. In the event of such removal, the arbitrator or arbitrators as the case may be and whose authority has been terminated by the decision of IDAC India under Article 18 (9) or Rule 19 (1), shall not be entitled to any fee
3. In the event any Arbitrator is removed, IDAC India shall inform him accordingly.

## **Article 20. Substitution of Arbitrator:**

1. In case of the resignation or death or termination of authority of an appointed arbitrator under Article 18& 19 above, a substitute arbitrator shall be appointed in his place in accordance with the Rules that were applicable to the appointment of the arbitrator being substituted.
2. The appointed arbitrator(s) will be informed about the reconstitution of the Arbitral Tribunal and the reconstituted Tribunal shall make the award within the time prescribed under these Rules. The reconstituted Arbitral Tribunal shall proceed with the arbitration from the stage prior to reconstitution of the Arbitral Tribunal.
3. If one or all of the Arbitrators are substituted, the arbitral proceedings shall continue from the stage before substituted Arbitrators are appointed and on the basis of the evidence and material already on record, and the Arbitrator(s) appointed under this rule shall be deemed to have received the said evidence and material.
4. In the event of arbitrator(s) being so appointed, the Arbitral Tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed Arbitral Tribunal.

## **Article 21. Conduct of the Arbitration Proceeding:**

1. The parties shall be treated with equality and each party shall be given a full opportunity to present his case.
2. The Arbitral Tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).
3. The Arbitral Tribunal and the parties shall make every effort to conduct the arbitration in an expeditious and cost-effective manner.
4. The Arbitral Tribunal shall have the power to conduct the arbitration proceedings by video conference, telephone or any similar means of communication in respect of such matters as may be feasible.
5. The power of the Arbitral Tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.
6. The Arbitral Tribunal may, with the consent of the parties, direct consolidation of two or more arbitral proceedings before it, if the disputes or differences therein are identical and between the same parties or between the parties

having commonality of interest or where such disputes arise out of separate contract but relate to the same transactions.

7. The Arbitral Tribunal may require either of the parties to give notice of the identity of witnesses including expert witnesses, the subject matter of their testimony and its relevance to the issues in writing before the commencement of any hearing.
8. The Arbitral Tribunal has discretion to allow, refuse or limit the appearance of witnesses.
9. Any witness who gives evidence either by affidavit or orally may be examined by each of the parties, their representatives and the Arbitral Tribunal in such manner as the Tribunal shall determine.
10. The Arbitral Tribunal may direct the evidence of witnesses to be presented in written form, as a sworn affidavits or any other form of recording. Subject to Article 21(2) of these rules, any party may request that such witness be examined orally. If the witness fails to attend, the Arbitral Tribunal may place such weight on the written evidence as it thinks fit.

## **Article 22. Summary Procedure:**

The Parties may mutually opt for a Summary Procedure and request the Tribunal, to decide the reference in a fixed time frame of 3 to 6 months, according to the Summary Procedure, as under:

1. The Arbitral Tribunal shall be authorized to decide the dispute on the written pleadings, documents and written submissions filed by the Parties without any oral hearings.
2. The Arbitral Tribunal shall have power to call for any further information/clarification from the parties in addition to the pleading and documents filed by them.
3. An oral hearing may be held if the parties in dispute make a joint request or if the Arbitral Tribunal considers an oral hearing necessary in any particular case.
4. If an oral hearing is held, the Arbitral Tribunal may dispense with any technical formalities and adopt such procedure as it deems appropriate and necessary for economic and expeditious disposal of the case.

### **Article 23. Jurisdiction of the Tribunal:**

1. The Tribunal may rule on its jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose:
  - (i) An arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and
  - (ii) A decision by the Tribunal that the contract is null and void shall not mean the invalidity of the arbitration clause of the contract.
2. A plea that the Tribunal does not have jurisdiction shall be raised not later than the submission of the Defense Statement. However, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of an arbitrator.
3. A plea that the Tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.
4. The Tribunal may, in either of the cases, referred to in Article 23 (2) or Article 23 (3) herein above, admit a subsequent plea if it considers the delay justified.
5. The Tribunal shall decide on a plea referred to in Article 23 (2) or Article 23 (3) herein above, and where the Tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an award.

### **Article 24. Hearings:**

1. Unless otherwise agreed by the parties, either party may amend or supplement his Claim or Defense during the course of the arbitral proceedings, unless the Arbitral Tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.
2. Unless the parties have agreed on arbitration through documents only, the Arbitral Tribunal shall, if either party requests or if the Tribunal so decides, hold a hearing for the presentation of evidence and for oral submissions on the merits of the dispute, including, without limitation any issue as to jurisdiction.
3. The parties shall be given sufficient advance notice of any hearing and of any meeting of the Tribunal for the purpose of inspection of documents, or other property.



4. All statements, documents or other information supplied to, or applications made to the Tribunal by one party shall be communicated to the other party, and any expert report or evidentiary document on which the Tribunal may rely in making its decision shall be communicated to the parties.

## **Article 25. Determination of Rule of Procedure**

1. Subject to the provisions of these Rules, the parties are free to agree on the procedure to be followed by the Arbitral Tribunal in conducting the Arbitration Proceedings.
2. Failing such agreement the Arbitral Tribunal may, subject to the provisions of these Rules, conduct the Arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

## **Article 26. Rules Applicable to Substance of Dispute**

1. The Arbitral Tribunal shall decide the dispute in accordance with the law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not otherwise.
2. Failing any designation by the parties, the Arbitral Tribunal shall apply the law determined by it to be applicable to the proceedings.
3. In all cases, the Arbitral Tribunal shall decide in accordance with the terms of the contract and shall take into account the custom and usages applicable to the transaction.

## **Article 27. Effects of default of a party:**

Unless otherwise agreed by the parties where, without showing sufficient cause, a party fails to file defense statement or fails to appear at an oral hearing or fails to produce documentary evidence, the Arbitral Tribunal may continue with the proceedings and make the award on the basis of document and / or evidence before it. However, Arbitral Tribunal in such an event may issue a Notice, to the defaulting party with copy to the other party, of its intention of proceeding in the matter on Ex-Parte basis.



## **Article 28. Appointment of Experts:**

1. Unless otherwise agreed by the parties, the Arbitral Tribunal may:
  - a) Appoint one or more experts to report to it on specific issues to be determined by the Tribunal, and
  - b) Require a party to give the expert any relevant information or to produce, or to provide access to, any relevant document(s) and allow such party for inspection for good or properties as the case may be.
2. Unless otherwise agreed by the parties, if a party so requests or if the Arbitral Tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in an oral hearing where the parties have the opportunity to examine him and to present such expert witnesses in order to testify on the points at issue.
3. Unless otherwise agreed by the parties, the expert shall, on the request of a party, make available to that party for examination all such documents, goods or any other relevant material in the possession of the expert with which he was provided in order to prepare his report.

## **Article 29. Court Assistance in taking Evidence**

The Arbitral Tribunal or a party with the approval of the arbitral tribunal may apply to a competent court of the State seeking its assistance taking evidence. The court may execute the request within its competence and according to its rules on taking evidence.

## **Article 30. Interim Measures:**

1. A party may, during the Arbitral proceedings or at any time after the making of the Arbitral Award but before it is enforced, apply to the Arbitral Tribunal –
  - (i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of Arbitral proceedings; or
  - (ii) for an interim measure of protection in respect of any of the following matters, namely:
    - a) the preservation, interim custody or sale of any goods which are the subject-matter of the Arbitration agreement;
    - b) securing the amount in dispute in the Arbitration;

- c) The detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein.
  - d) Authorizing for any of the aforesaid purposes any person to enter upon any property in the possession of any party, or authorizing any samples to be taken, or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;
  - e) interim injunction or the appointment of a receiver;
  - f) such other interim measure of protection as may appear to the Arbitral Tribunal to be just and proper, and the Arbitral Tribunal shall have the same power for making orders, as the court has for the purpose of, and in relation to, any proceedings before it.
2. Subject to any orders passed in an appeal under the Act, any order issued by the arbitral tribunal under this Rules shall be deemed to be an order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908, in the same manner as if it were an order of the Court.

### **Article 31. Settlement**

1. The Arbitral Tribunal may facilitate the settlement between the parties if, during Arbitral proceedings, the parties wishes to come to a settlement. The Arbitral Tribunal shall suspend the proceedings for a given time as agreed between the parties to arrive at such settlement. If settlement is arrived at between the parties and, if requested by the parties and not objected to by the Arbitral Tribunal, it may record the settlement in the form of an Arbitral award on agreed terms. If, however, settlement is not arrived at, the Arbitral Tribunal shall proceed with the proceedings and make its Award.
2. An award on agreed terms shall be made in accordance with the provisions of Article 34 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

### **Article 32. Closure of Proceedings**

1. The Tribunal shall declare the proceedings closed when it is satisfied that the parties have availed full opportunity to present submissions and evidence.

The Tribunal may, if it considers it necessary owing to exceptional circumstances, decide on its own motion or upon application of a party, to re-open the proceedings it declared to be closed at any time before the award is made.

2. Following closure of the proceedings, the Tribunal shall proceed to make its award.

### **Article 33. Decision making by Panel of Arbitrators**

In Arbitral proceedings with more than one Arbitrator, any decision of the Arbitral Tribunal shall be made, by a majority of all its members including a question of procedure.

### **Article 34. The Award:**

1. The award must be in writing and signed by the members of the Tribunal.
2. For the purpose of sub-rule (1) above, in arbitral proceedings with more than one arbitrator the signatures of the majority of all the members of the Tribunal shall be sufficient so long as the reason for any omitted signature is stated.
3. The award shall mention the reasons upon which it is based, unless the parties have otherwise agreed or where the award is by consent.
4. (a) The award shall mention its date and the place of arbitration and the award shall be deemed to have been made at that place.  
(b) Whenever there is more than one arbitrator, the award of the majority shall prevail and be taken as the decision of arbitral tribunal.
5. The Arbitral Tribunal shall make the award as expeditiously as possible, preferably within 12 months, from the date of the reference subject to a maximum limit of eighteen months from the date on which Arbitral Tribunal entered into reference in terms of Article 11(9).
6. The parties mutually agreed to waive their right of consent and bestow upon IDAC India the right to extend the time for making of an award for a further period of six months, if applied for, by any of the parties, provided such request is to be found reasonable and necessary.
7. If the award is not made within the aforesaid period of 12 months or 18 months, as the case may be, the mandate of the arbitrator shall terminate

- unless the Court has either prior to or after the expiry of the period further extended the period for passing of award.
8. In the event, the arbitrators are substituted by the Court under the Act, the arbitration proceedings may continue from the stage it has reached and on the basis of the evidence and material already on record and the arbitrator(s), so appointed, shall be deemed to have received the said evidence and material. The Arbitral Tribunal, so reconstituted, shall be deemed in continuation of the previous Arbitral Tribunal.
  9. The arbitrators shall not be entitled to any fees in the event of cancellation of their mandate for not making of the award within the time specified.
  10. Unless otherwise agreed by the parties, where and in so far as an award is for the payment of money, the Arbitral Tribunal may include in the sum, for which the award is made, interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made. A sum directed to be paid with interest shall carry interest from the date of the award till the date of payment.
  11. In its award, the Arbitral Tribunal may, subject to any contrary agreement by the parties and in the light of all the circumstances and the outcome of the arbitration, order a party to pay the whole or part of arbitration costs incurred by the other party.
  12. The arbitrators constituting the Arbitral Tribunal shall sign the award and IDAC India shall give notice in writing to the parties of the making and signing thereof and of the amount of costs, expenses and charges payable in respect of the arbitration and the award. The arbitrator/s fee shall be payable by the IDAC India on receipt of the award and upon requisite deposit of the arbitration cost made by the parties.
  13. Should the parties arrive at a settlement of the dispute by common agreement before the Arbitral Tribunal and the Arbitral Tribunal is satisfied that such agreement is genuine and not to defeat the purpose of any law, the Arbitral Tribunal shall render a consent Award as per agreement of the parties.
  14. When an Award has been made, a copy of the Award certified by IDAC India shall be furnished to the parties provided the arbitration costs have been fully paid to the Council by the parties or by one of them.

15. Additional copies of the Award certified true by IDAC India shall be made available to the parties, but none else, at all times at request and on payment as fixed by IDAC India.
16. The Award shall be written on a Stamp Paper of appropriate value as is determined in accordance with the law applicable to the Arbitral Proceedings.
17. Stamp duties are to be paid by the parties in equal share in all cases in accordance with the scale of stamp duties for the time being imposed by law.
18. IDAC India may publish any Award with the names of the parties and other identifying information in abridged form.
19. The Arbitral Tribunal may make an ex-parte award.
20. In case of an ex-parte Award, the entire stamp duty shall be paid by the Claimant in accordance with the scale of stamp duties for the time being imposed by law.
21. If the arbitral tribunal decides to make an order as to the payment of costs with interest on costs, the general rule is that the unsuccessful party shall be ordered to pay such costs with interest as may be determined by the arbitral tribunal to the successful party or the arbitral tribunal may make different orders for reasons to be recorded in writing.
22. In determining the costs, the arbitral tribunal shall refer to all the circumstances including:-
  - (a) The conduct of all the parties;
  - (b) Whether a party has succeeded partly in the case;
  - (c) Whether the party had made a frivolous counter claim leading to delay in disposal of arbitral proceedings;
  - (d) Whether any reasonable offer to settle the dispute is made by a party and refused by the other party.
23. After the constitution of the arbitral tribunal and during the arbitral proceedings if any party makes a challenge as to the independence and impartiality of the arbitrator, the arbitral proceedings shall remain suspended during the period such challenge is decided.
24. If such challenge is rejected, the arbitral tribunal shall be at liberty to impose such exemplary cost on the party making challenge as it may be decided by the arbitral tribunal.

25. In the event such challenge is upheld, the arbitrators so challenged shall stand discharged and shall not be entitled to any fees.
26. The period during which the arbitral proceedings remain suspended shall be excluded from the period within which the award is to be made in terms of Article 34 (5).

### **Article 35. Correction, Interpretation and Remission of Awards:**

1. Within thirty days from the receipt of arbitral award, a party, through IDAC India, may request the Arbitral Tribunal to correct any computation errors, any clerical or typographical errors or any other errors of similar nature occurring in the Award.
2. A party, through IDAC India may request, within thirty days from the receipt of the arbitral award, the Arbitral Tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the arbitral award. IDAC India shall forward the request to the Tribunal with the copy to the parties.
3. If the Tribunal considers the request made under Article 35 (2) to be justified, it shall make the additional arbitral award within sixty days from the receipt of such request
4. IDAC India shall thereafter forward the request to the Tribunal with a copy to the other party.
5. A party, through IDAC India, may request the Arbitral Tribunal to give an interpretation of a specific point or part of the award.
6. If Tribunal considers the request made under Article 35 (5) to be justified, it shall make the corrections or give the interpretation within thirty days from the receipt of such request and interpretation shall form part of the arbitral award.
7. The Tribunal may also correct any error of the type referred to under Article 35 (1), on its own initiative, within thirty days from the date of the arbitral award.
8. The Tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral award under this Article.



### **Article 36. Confidentiality**

1. Unless the parties have otherwise agreed, the Arbitral Tribunal and the parties at all times shall follow a general principle to maintain the confidentiality of the arbitration and the award.
2. The Arbitral Tribunal or a party, without prior written consent of all the other parties shall not disclose any such matter to a third party unless:
  - (a) Disclosure may be required of a party by legal duty; or
  - (b) It is to protect or pursue legal right; or
  - (c) To enforce or challenge an award in bona fide legal proceedings before a Court or other judicial authority.

### **Article 37. Recognition and Enforcement**

1. An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of Article 18.
2. The party applying for enforcement of the Award shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in Article 5 or a duly certified copy thereof. If the award or agreement is not made in an official language of the State, the party shall supply a duly certified translation thereof into such language.

### **Article 38. Grounds for refusing recognition or enforcement.**

1. Enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:
  - a) At the request of the party against whom it is to be enforced if that party furnishes, to the competent court where enforcement is sought, proof that:
    - i. a party to the arbitration agreement referred to in Article 5 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
    - ii. the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or



- iii. the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
  - iv. the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
  - v. the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or
- (b) If the court finds that:
- (i) The subject-matter of the dispute is not capable of settlement by arbitration under the applicable law as per law of the prevailing country
  - (ii) The recognition or enforcement of the award would be contrary to the public policy of the State.
2. If an application for setting aside or suspension of an award has been made to a court referred to in Article 38 (1)(a)(v) of this article, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

### **Article 39. Indemnity of IDAC India's Chairman/ Director and the Arbitrators:**

1. IDAC India's Chairman and the arbitrators shall not be liable for any act or omission in whatever capacity they may have acted in connection with or in relation to an arbitration under these Rules. Parties are themselves required to contest the proceedings regarding the validity of the arbitration agreement before the Court.

2. No party shall bring or prosecute any suit or proceedings whatsoever against the Tribunal, or any member thereof, for or in respect of any matter or thing purporting to be done under these Rules.

#### **Article 40. General Provisions:**

1. A party who knows that any provision or requirement under these Rules has not been complied with intentionally or unintentionally and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay shall be deemed to have waived his right to so object at a later stage.
2. The decisions of IDAC India with respect to all matters relating to these rules shall be conclusive and binding upon the parties.
3. Unless required to be filed in a Court of law, the arbitral tribunal shall have full discretion to retain/to return all books, documents or papers produced before it and may direct at any time that the books, documents or papers produced before it or any of them may be returned to the parties producing them on such terms and conditions as the arbitral tribunal may impose.

#### **Article 41. Functions of IDAC India:**

1. IDAC India will empanel arbitrators as per the Empanelment Policy and Regulations for Empanelment of Arbitrators of IDAC India effective from 31<sup>st</sup> December, 2020.
2. IDAC India shall receive request for arbitration, receive payment of arbitration costs.
3. IDAC India shall also receive all communications made to the Arbitral Tribunal by the parties and communicate to them the orders and directions of the Arbitral Tribunal, keep a register of all applications or requests made to IDAC India and of awards made by the Arbitral Tribunal, keep such other books or memoranda and make such other records or returns as IDAC India shall from time to time require and generally carry out the directions of a Arbitral Tribunal so constituted under these Rules and take such other steps as may be necessary to assist such Arbitral Tribunal in carrying out of its functions.
4. IDAC India may delegate to any officer of IDAC India at the venue where the arbitration proceedings are taking place, to discharge such of the functions and administrative duties of IDAC India as are deemed proper and necessary from time to time, with reference to a particular case or cases.

## **Article 42. Amendment of Rules:**

IDAC India may revise, amend, alter or delete any or all of these Rules or the Schedule of Fee and other monies to be charged and paid as and when it so decides.

## **Article 43. Residuary Powers of IDAC India:**

IDAC India may take decisions, as it considers appropriate and necessary in respect of all matters, which are not specifically provided in these Rules.

## **Article 44. Fee Schedule:**

### **IDAC India's International Arbitration Fee Structure**

Sr. No.	Sum in dispute	Arbitration Fees (In USD for the minimum amount)	Filing Fees	Total Fees
1	Up to USD 10,000	900	100	1000
2	USD 10,001 and up to USD. 30,000/-	1000	200	1200+ 5 per cent of sum in dispute over and above USD 10,001/-
3	USD 30,001 and up to 1,50,000	2000	500	2500+ 4 per cent of sum in dispute over and above USD 30,001/-
4	USD 1,50,001 and up to 1,000,000	4,800	500	5300+ 3 per cent of sum in dispute over and above 1,50,001/-
5	USD 1,000,001 to 2,000,000	7500	1000	8500+ 2 per cent of sum in dispute over and above 1,000, 001/-
6	Above USD 2,000,000	10,000	1500	11500+ 1 percent of sum in dispute over and above USD 2,000, 000
<b>Notes:</b>	1. In the event, the arbitral tribunal is a sole arbitrator, he shall be entitled to an additional amount of twenty five per cent, on the fee payable as per the table set out above.			
	2. Filing Charges is to be paid along with the application for appointment of an Arbitrator by a Cheque/Bank Transfer drawn in favor of IDAC INDIA.			

	<b>3.</b> The Fees Payment will be made as per schedule provided by IDAC India
	<b>4.</b> The Above Arbitral Tribunal's fee & filing fees will be applicable on the value of Counter Claims (If any), also.
	<b>5.</b> The Above Fee structure is subject to review as when the revision in fee payable is made under Schedule 4 of Arbitration & Conciliation Act 1996.
	<b>6.</b> GST or any taxes will be charged extra on the above fees as per applicable Law.
	<b>7.</b> Travelling, Lodging, Boarding if required for arbitrators from outstation, will be reimbursed to IDAC India as provided in these Rules as Administrative charges.