

THE **I**NTERNATIONAL AND **W**ESTERN **H**EMISPHERE **A**RBITRATION
AND **M**EDIATION CENTRE RULES
REGARDING THE APPOINTMENTS COMMITTEE
AND RELATED MATTERS

FUNCTIONS OF IWHAM

To administer the conduct of arbitration and mediation matters, that have been agreed to be conducted by the International and Western Hemisphere Arbitration and Mediation Centre (herein after referred to as "IIWHAM"). The Appointments Committee of IWHAM will perform the functions of the appointing authority set forth in the UNCITRAL Arbitration Rules (2013) whenever:

- (i) IWHAM has been so designated by the parties either in the arbitration clause of their contract or in a separate agreement, or
- (ii) The parties have agreed to submit a dispute to the Appointments under the UNCITRAL Arbitration Rules without specifically designating it as the appointing authority, and
- (iii) A reference made to "Article" followed by a numeric character or a combination thereof is a reference made to the UNCITRAL Arbitration Rules.

Rule 1 – General

1. Where parties have agreed in writing to arbitrate their disputes in accordance with the Rules, then:
 - a. Such disputes shall be settled or resolved by arbitration in accordance with the Rules; and
 - b. The arbitration shall be conducted and administered by the Chairman of IWHAM in accordance with the Rules.
2. The Rules applicable to the arbitration shall be those in force at the time of commencement of the arbitration unless the parties have agreed otherwise.
3. These Rules are supplement to the provisions of the IWHAM Act.

Rule 2 – Commencement of Arbitration

1. The party or parties initiating recourse to arbitration under the Rules shall be required to submit a written request to the Appointments Committee of IWHAM together with a copy of the Notice of Arbitral Proceedings served on the Respondent pursuant to Article 3 and shall be accompanied by the following:
 - a. A copy of the written arbitration clause; and contractual documentation in which the arbitration clause is contained or in respect of which the arbitration arises;
 - b. Confirmation to the Appointments Committee of IWHAM that the Notice of Arbitral Proceedings has been or is being served on all other parties to the arbitration by one or more means of service to be identified in such confirmation; and
 - c. A non-refundable registration fee amounting to
2. The date of receipt by the Appointments Committee of IWHAM of the request complete with all the accompanying documentation and non-refundable registration fee shall be treated as the date on which the Arbitral Proceedings has commenced for all purposes.

Rule 3 - Notification and Pleadings

1. All documents served pursuant to Articles 3, 4, 20, 21, 22, 23 and 24 shall be served on the Appointments Committee of IWHAM at the time of such service on the other party or immediately thereafter.

Rule 4 – Appointment of Arbitrators and Mediators

1. The parties may appoint an arbitrator or mediator by way of a written and signed agreement.
2. An arbitrator or a mediator appointed under this Part shall:
 - a. Possess the relevant qualifications, special knowledge or experience in arbitration and mediation through training or formal tertiary education or
 - b. Satisfy the requirements of the Appointments Committee of IWHAM.
3. The parties may request for assistance from the Appointments Committee of IWHAM to appoint the Arbitrator or Mediator on their behalf.

Rule 5 – Termination of Appointment of Arbitrator or Mediator

1. If an arbitrator or a mediator appointed under this Part—
 1. No longer possesses the relevant qualifications, special knowledge or experience in mediation as required;
 2. No longer satisfies the requirement of the Appointments Committee of IWHAM as required under Rule 4(2)(b);
 3. Is found to have financial or personal interest in the dispute;
 4. Is found to have obtained his appointment by way of fraud; or
 5. Is unable to serve as arbitrator or mediator, the parties may terminate the appointment of the arbitrator or mediator and appoint another in his stead or request the Appointments Committee of IWHAM to appoint another arbitrator or mediator.
2. Notwithstanding subsection (1), the parties may terminate the appointment of an arbitrator or a mediator for any reason and shall inform the arbitrator or mediator, as well as the Appointments Committee of IWHAM where applicable, of the reason for the termination.

Rule 6 – Seat of Arbitration

1. The parties may agree on the seat of arbitration. Failing such agreement, the seat of arbitration shall be within the Commonwealth of The Bahamas unless the arbitral tribunal determines, having regard to all the circumstances of the case, that another seat is more appropriate.
2. The arbitral tribunal may meet at any location it considers appropriate for deliberations. Unless otherwise agreed by parties, the arbitral tribunal may also meet at any location it considers appropriate for any purpose, including hearings.

Rule 7 – Interim Relief

1. The arbitral tribunal may, at the request of a party grant interim measures pursuant to Article 26.

Rule 8 – Consolidation of Proceedings and Concurrent Hearings

1. The parties may agree –

- a. That the arbitral proceedings shall be consolidated with other arbitration proceedings; or
 - b. That concurrent hearings shall be held, on such terms as may be agreed.
2. Unless the parties agree to confer such power on the arbitral tribunal, the tribunal has no power to order consolidation of arbitral proceedings or concurrent hearings.

Rule 9 – Facilities

The Chairman of IWHAM shall, at the request of the arbitral tribunal or either party, make available, or arrange for, such facilities and assistance for the conduct of the arbitral proceedings as may be required, including suitable accommodation for sittings of the arbitral tribunal, secretarial assistance, transcription services, video conferencing and interpretation facilities.

Rule 10 – Arbitral Procedure

The arbitral tribunal may conduct the arbitration in such manner as it considers appropriate and without prejudice to the generality of the foregoing may, unless all parties to the arbitration otherwise agree, limit the time available for each party to present its case.

Rule 12 – Costs

1. The term “costs” as specified in Article 40 shall include the expenses reasonably incurred by the Chairman of IWHAM in connection with the arbitral or mediation proceedings, the administrative costs of the Chairman of IWHAM as well as the costs of the facilities made available by the Chairman of IWHAM under Rule 9 above.
2. Unless otherwise agreed by the parties and the arbitral tribunal pursuant to Rule 12(4), the fees of the arbitral tribunal or mediator shall be fixed by the Chairman of IWHAM in accordance with the Schedule of Fees.
3. Notwithstanding the above, all the parties and the arbitral tribunal or mediator are at liberty to agree on the fees and expenses within the period of 30 days

after the appointment of the arbitral tribunal or mediator and the arbitral tribunal or mediator shall inform the Chairman of IWHAM.

4. The administrative costs of the arbitration or mediation shall be fixed by the Chairman of IWHAM in accordance with the Schedule of Fees.
5. The fees of the arbitral tribunal or mediator and administrative costs under Rule 12(3), and (4)\ above may, in exceptional, unusual or unforeseen circumstances, be adjusted from time to time at the discretion of the Chairman of IWHAM.
6. The fees and the administrative costs under the Schedule of Fees are determined based on the amount in dispute. For the purpose of calculating the amount in dispute, the value of any counter-claim and/or set-off will be added to the amount of the claim.
7. Where a claim or counterclaim does not state a monetary amount, an appropriate value for the claim or counterclaim shall be settled by the Chairman of IWHAM in consultation with the arbitral tribunal or the mediator and the parties for the purpose of computing the fees and the administrative costs.
8. Notwithstanding Rule 13, the arbitral tribunal or mediator may determine the proportion of costs to be borne by the parties.

Rule 13 – Deposits

In lieu of the provisions of Article 43, the following provisions shall apply:

1. Subsequent to the commencement of the proceedings in accordance with Rule 2, the Chairman of IWHAM shall fix a provisional advance deposit in an amount intended to cover the costs of the arbitration or mediation. Any such provisional advance deposit shall be paid by the parties in equal shares and will be considered as a partial payment by the parties of any deposits of costs fixed by the Chairman of IWHAM under Rule 12.
2. Such provisional advance deposit shall be payable within 21 days upon request from the Chairman of IWHAM. In the event that any of the parties fail to pay such deposit, the Chairman of IWHAM shall so inform the parties in order that one or another of them may make the required payment. The arbitral tribunal or the mediator shall not proceed with the arbitral proceedings until such provisional advance deposit is paid in full.

3. Upon fixing of the fees of the arbitral tribunal or mediation and administrative costs of arbitration by the Chairman of IWHAM pursuant to Rule 12, including the fees and expenses of the arbitral tribunal or mediator if any, pursuant to Rule 12(2), the Chairman of IWHAM shall prepare an estimate of the fees and expenses of the arbitral tribunal or mediator and the administrative costs of the arbitration or mediation which the parties shall bear equally. Within 21 days of written notification by the Chairman of IWHAM of such estimate, each party shall deposit its share of the estimate with the Chairman of IWHAM.
4. During the course of the proceedings the Chairman of IWHAM may request further deposits from the parties which shall be paid by the parties in equal shares within 21 days of such request.
5. Notwithstanding Rule 13(4), where counterclaims are submitted by the respondent, the Chairman of IWHAM may fix separate deposits on costs for the claims and counterclaims. When the Chairman of IWHAM has fixed separate advance preliminary deposits on costs, each of the parties shall pay the advance preliminary deposit corresponding to its claims.
6. If the required deposits are not paid in full, the Chairman of IWHAM shall so inform the parties in order that one or another of them may make the required payment. If such payment is not made, the arbitral tribunal or mediator, after consultation with the Chairman of IWHAM, may order the suspension or termination of the arbitral proceedings or any part thereof.
7. Notwithstanding the above, the Chairman of IWHAM shall have the discretion to determine the proportion of deposits required to be paid by the parties.
8. The Chairman of IWHAM may apply the deposits towards the administrative costs of the Chairman of IWHAM, fees of the arbitrator or mediator and the Arbitrator's or mediator's out-of-pocket and per diem expenses in such manner and at such times as the Chairman of IWHAM thinks fit.
9. After the award has been made, the Chairman of IWHAM shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties based on the parties' respective contributions.

Rule 14 – Confidentiality

1. The arbitral tribunal, mediator, the parties, all experts, all witnesses and the Chairman of IWHAM shall keep confidential all matters relating to the arbitral or mediation proceedings including any award except where disclosure is necessary for purposes of implementation and enforcement or to the extent that disclosure may be required of a party by legal duty, to protect or pursue a legal right or to challenge an award in bona fide legal proceedings before a state court or other judicial authority.
2. In this Rule, "matters relating to the proceedings" means the existence of the proceedings, and the pleadings, evidence and other materials in the proceedings and all other documents produced by another party in the proceedings or the award arising from the proceedings, but excludes any matter that is otherwise in the public domain.

Rule 15 – No Liability

Neither the Chairman of IWHAM, the arbitral tribunal, nor mediator shall be liable to any party for any act or omission related to the conduct of the proceedings.

Rule 16 Non-Reliance

The parties and the arbitral tribunal or mediator agree that statements or comments whether written or oral made in the course of the proceedings shall not be relied upon to institute or commence or maintain any action for defamation, libel, slander or any other complaint.