

# RULES of Arbitration

*In force as from 1 March 2017*



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# RULES OF ARBITRATION OF THE VIETNAM INTERNATIONAL ARBITRATION CENTRE

*In force as from 1 March 2017*

## Article 1.

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### Scope of application

1. The Rules of Arbitration of the Vietnam International Arbitration Centre shall apply to resolve disputes at the Vietnam International Arbitration Centre.
2. These Rules shall apply to resolve the disputes of which the arbitral proceedings commence on or after 1 March 2017 unless the parties have agreed otherwise.

## Article 2.

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### Interpretation

In these Rules, the following terms shall be understood as follows:

1. "Centre" means the Vietnam International Arbitration Centre, also called the Vietnam International Arbitration Centre at the Vietnam Chamber of Commerce and Industry.
2. "List of Arbitrators" means the list of arbitrators at the Centre.
3. "Arbitral Tribunal" comprises three Arbitrators or a Sole Arbitrator.

4. "Claimant" includes one or more claimants; "Respondent" includes one or more respondents.

### Article 3.

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#### **Notice and document; calculation of periods of time**

1. Any notice or document submitted by any party to the Centre shall be in a sufficient number of copies for the Centre to forward one copy to each member of the Arbitral Tribunal, one copy to the other party, and to file one copy.
2. Any notice and document shall be sent by the Centre to the parties at the addresses provided by the parties and can be sent by delivery against receipt, registered mail, facsimile, email or any other means of communication that provides a record of the sending thereof.
3. Any notice or document sent by the Centre to the parties shall be deemed to have been received on the day it was received by the parties, or would have been received on the day of delivery if the notice or document has been sent in accordance with paragraph 2 of this Article.
4. The periods of time specified in these Rules shall start to run on the day following the date the notice or document is deemed to have been received in accordance with paragraph 3 of this Article. If the day following such date is a non-business day under the regulations at the place of receipt, the period of time shall commence on the first following business day; and if the last day of the period of time is a non-business day under the regulations at the place of receipt, the period of time shall expire at the end of the first following business day. Non-business days occurring during



the running of the period of time are included in calculating the period of time.

#### **Article 4.**

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### **Participation in arbitral proceedings**

1. The parties may directly participate in or authorize in writing representatives to participate in the arbitral proceedings.
2. The Arbitral Tribunal or the Centre, where the Arbitral Tribunal has not yet been constituted, shall have the power to request the parties to provide proof of the authority of any person participating in the arbitral proceedings.

#### **Article 5.**

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### **Commencement of arbitral proceedings**

Unless otherwise agreed by the parties, the arbitral proceedings shall commence on the date on which the Centre receives the Request for Arbitration of the Claimant in accordance with paragraph 2 of Article 7 of these Rules.

#### **Article 6.**

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### **Multiple contracts**

Claims arising out of or in connection with more than one contract may be made in a single Request for Arbitration to be resolved in a single arbitration, irrespective of whether such claims are made under one or more than one arbitration agreement.

## Article 7.

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### Request for Arbitration

1. A party wishing to commence an arbitration at the Centre shall submit its Request for Arbitration to the Centre.
2. The Request for Arbitration shall contain the following information:
  - a) Date, month, year on which the Request for Arbitration is made;
  - b) Names and addresses of the parties;
  - c) Summary of the content of the dispute;
  - d) Grounds for the claims;
  - dd) Monetary value of the dispute and other claims of the Claimant;
  - e) Name of the person selected by the Claimant to act as Arbitrator or a request to the Centre to appoint an Arbitrator in accordance with paragraph 1 of Article 12 or Article 13 of these Rules;
  - g) Signature of the legal representative or the authorized representative where the Claimant is an organization; signature of the individual or the authorized representative where the Claimant is an individual.
3. The Request for Arbitration shall be accompanied by the arbitration agreement and other relevant documents.
4. The Request for Arbitration, the arbitration agreement and other relevant documents shall be submitted in a sufficient number of copies in accordance with paragraph 1 of Article 3 of these Rules.

## **Article 8.**

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### **Delivery of Notice and Request for Arbitration**

Unless the parties have agreed otherwise on the period of time, the Centre shall, within 10 days from the date of receipt of the Request for Arbitration, the arbitration agreement, other relevant documents and the arbitration costs as stipulated in Article 35 of these Rules, send the Respondent a Notice, the Request for Arbitration, the arbitration agreement and other relevant documents.

## **Article 9.**

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### **Statement of Defence**

1. Unless otherwise agreed by the parties on the period of time, the Respondent shall, within 30 days starting from the day immediately following the date of receipt of the Notice, the Request for Arbitration, the arbitration agreement and other relevant documents, submit to the Centre a Statement of Defence. The Statement of Defence shall contain the following information:
  - a) Date, month, year on which the Statement of Defence is made;
  - b) Name and address of the Respondent;
  - c) Grounds for the defence;
  - d) Name of the person selected by the Respondent to act as Arbitrator or a request to the Centre to appoint an Arbitrator in accordance with paragraph 2 of Article 12 or Article 13 of these Rules;

dd) Signature of the legal representative or the authorized representative where the Respondent is an organization; signature of the individual or the authorized representative where the Respondent is an individual.

Where the Respondent alleges that there is no arbitration agreement or that the arbitration agreement is invalid or incapable of being performed, the Respondent shall state such allegations in the Statement of Defence. If the Respondent fails to do so, it shall be deemed to lose its right to raise objection to above-mentioned matters. In such case, the Respondent shall still select an Arbitrator or request the Centre to appoint an Arbitrator.

2. At the request of the Respondent, the Centre may extend the period of time for submission of the Statement of Defence. The request for extension must be in writing and delivered to the Centre prior to the expiry date of aforesaid period of 30 days or the extended period of time for submission of the Statement of Defence.

In such case, the Respondent shall still select an Arbitrator or request the Centre to appoint an Arbitrator within the aforesaid period of 30 days as prescribed in paragraph 1 of this Article.

3. The Statement of Defence and the relevant documents shall be submitted in a sufficient number of copies in accordance with paragraph 1 of Article 3 of these Rules.
4. If the Respondent fails to submit the Statement of Defence, the arbitral proceedings shall still proceed.

## Article 10.

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### Counterclaim

1. The Respondent shall have the right to file a counterclaim against the Claimant. The Counterclaim must be based on the arbitration agreement on which the Claimant has relied to make the Request for Arbitration against the Respondent. The Counterclaim shall be made in a separate document; and submitted to the Centre at the same time as and with the submission of the Statement of Defence.
2. The Counterclaim shall contain the following information:
  - a) Date, month, year on which the Counterclaim is made;
  - b) Names and addresses of the parties;
  - c) Summary of the content of the Counterclaim;
  - d) Grounds for the counterclaims;
  - dd) Monetary value of the Counterclaim and other claims of the Respondent;
  - e) Signature of the legal representative or the authorized representative where the Respondent is an organization; signature of the individual or the authorized representative where the Respondent is an individual.
3. The Counterclaim and the relevant documents shall be submitted in a sufficient number of copies in accordance with paragraph 1 of Article 3 of these Rules.
4. Unless otherwise agreed by the parties on the period of time, the Centre shall, within 10 days from the date of receipt of the Counterclaim, the relevant documents and the costs of arbitration

as stipulated in Article 35 of these Rules, send the Claimant a Notice, the Counterclaim and the relevant documents.

5. Unless otherwise agreed by the parties on the period of time, the Claimant shall, within 30 days starting from the day immediately following the date of receipt of the Notice, the Counterclaim and the relevant documents, submit to the Centre a Statement of Defence against the Counterclaim in a sufficient number of copies in accordance with paragraph 1 of Article 3 of these Rules.
6. The Counterclaim shall be concurrently resolved by the same Arbitral Tribunal that resolves the Request for Arbitration of the Claimant.

## **Article 11.**

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### **Number of Arbitrators**

1. The dispute shall be resolved by an Arbitral Tribunal comprising three Arbitrators or a Sole Arbitrator.
2. Unless the parties have agreed that the dispute shall be resolved by a Sole Arbitrator, the dispute shall be resolved by an Arbitral Tribunal comprising three Arbitrators.

## **Article 12.**

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### **Constitution of an Arbitral Tribunal comprising three Arbitrators**

1. Unless otherwise agreed by the parties, the Claimant shall select an Arbitrator or request the Centre to appoint an Arbitrator. Where there are multiple claimants, the Claimant shall agree on the selection of one Arbitrator or agree to request the

Centre to appoint an Arbitrator and shall notify the Centre. Where the name of the person selected as Arbitrator is not included in the List of Arbitrators, the Claimant shall inform the Centre of the address of such an Arbitrator.

Where the Claimant requests the Centre to appoint an Arbitrator, the Centre's President shall, within 07 days from the date of receipt of the request, make a decision to appoint an Arbitrator.

2. Unless otherwise agreed by the parties, the Respondent shall select an Arbitrator or request the Centre to appoint an Arbitrator and shall notify the Centre within 30 days starting from the day immediately following the date of receipt of the Notice, the Request for Arbitration, the arbitration agreement and other relevant documents. Where there are multiple respondents, the Respondent shall agree on the selection of one Arbitrator or agree to request the Centre to appoint an Arbitrator and shall notify the Centre. Where the name of the person selected as Arbitrator is not included in the List of Arbitrators, the Respondent shall inform the Centre of the address of such an Arbitrator.

Where the Respondent requests the Centre to appoint an Arbitrator, the Centre's President shall, within 07 days from the date of receipt of the request, make a decision to appoint an Arbitrator.

If the Respondent fails to select an Arbitrator or to request the Centre to appoint an Arbitrator within the aforesaid period of 30 days, the Centre's President shall, within 07 days after the expiry date of the period of time, make a decision to appoint an Arbitrator. Where there are multiple respondents, if the Respondent fails to agree on the selection of one Arbitrator or to request the Centre to appoint an Arbitrator within the aforesaid period of time, the Centre's President shall, within 07 days after the expiry date of the period of time, make a decision to appoint an Arbitrator.

3. Unless otherwise agreed by the parties, within 15 days from the date on which the Arbitrator selected by the Respondent or appointed by the Centre's President receives the notice of the selection or appointment, the two Arbitrators shall select a third person who will act as the Presiding Arbitrator of the Arbitral Tribunal and shall notify the Centre. If the Centre does not receive the notification by the expiry of the period of time, the Centre's President shall, within 07 days after the expiry date of the period of time, make a decision to appoint the Presiding Arbitrator of the Arbitral Tribunal.
4. In making the decision pursuant to the provisions of paragraphs 1, 2 and 3 of this Article and Article 13 of these Rules, the Centre's President shall have due regard to the necessary qualifications of an Arbitrator as agreed by the parties and pursuant to these Rules. The Centre's President shall also consider whether or not the appointed Arbitrator has sufficient time to resolve the dispute efficiently.

### **Article 13.**

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#### **Constitution of an Arbitral Tribunal comprising a Sole Arbitrator**

Unless otherwise agreed by the parties, within 30 days starting from the day immediately following the date on which the Respondent receives the Notice, the Request for Arbitration, the arbitration agreement and other relevant documents, the parties shall agree on the selection of a Sole Arbitrator or request the Centre to appoint a Sole Arbitrator and shall notify the Centre. Where the name of the person selected as the Sole Arbitrator is not included in the List of Arbitrators, the parties shall inform the Centre of the address of such an Arbitrator.

If the Centre does not receive the notification, the



Centre's President shall, within 07 days after the expiry date of the aforesaid period of time, make a decision to appoint the Sole Arbitrator.

## **Article 14.**

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### **Withdrawal of the Request for Arbitration and/or the Counterclaim; amendment and/or supplement to the Request for Arbitration, the Counterclaim, the Statement of Defence, and/or the Statement of Defence against the Counterclaim**

1. The parties have the right to withdraw the Request for Arbitration and/or the Counterclaim before the Arbitral Tribunal makes the Arbitral Award.
2. The parties may amend and/or supplement the Request for Arbitration, the Counterclaim, the Statement of Defence and/or the Statement of Defence against the Counterclaim before the final hearing finishes. The amendment and/or the supplement shall be in writing in a sufficient number of copies in accordance with paragraph 1 of Article 3 of these Rules. The Arbitral Tribunal shall have the power to disallow the amendment and/or the supplement if the Arbitral Tribunal considers it an abuse aimed at causing difficulties or delaying the making of the Arbitral Award or if it exceeds the scope of the arbitration agreement applicable to the dispute.

## **Article 15.**

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### **Consolidation of arbitrations**

1. Parties may agree to consolidate two or more arbitrations pending under these Rules into a

single arbitration. The Centre shall decide on whether the arbitrations are consolidated upon its consideration on relevant matters.

2. Unless otherwise agreed by the parties, the arbitrations shall be consolidated into the arbitration that commenced first.

## Article 16.

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### **General provisions in respect of Arbitrators**

1. Upon receipt of the notice of selection or appointment as Arbitrator and throughout the arbitral proceedings, the selected or appointed Arbitrator shall duly disclose to the Centre any fact which may cause any doubt about his or her impartiality, independence, or objectivity which shall be notified to the parties.
2. An Arbitrator shall not be permitted to act as lawyer for any party.
3. The selected or appointed arbitrators must decline to act as an Arbitration under the following circumstances:
  - a) The arbitrator is a relative or representative of a party;
  - b) The arbitrator has an interest related to the dispute;
  - c) The arbitrator was a mediator, a representative or a lawyer for either party in the dispute currently being brought to the Centre for resolution unless the parties have agreed otherwise in writing;
  - d) There are clear grounds demonstrating that

- the prospective arbitrator is not impartial or objective;
- dd) The arbitrator fails to meet the specific qualifications agreed by the parties;
  - e) The arbitrator fails to meet the qualifications specified in the applicable arbitration law.
4. During the arbitral proceedings, an Arbitrator shall not be permitted to privately meet or contact any party and no party shall be permitted to privately meet or contact any Arbitrator with respect to any issue relating to the dispute.
  5. If the parties have agreed on the specific qualifications of an Arbitrator, the Arbitrator shall be deemed to meet such qualifications unless a party, within 15 days starting from the day immediately following the date of receipt of a notice of selection or appointment of the Arbitrator, has a request for replacement on the grounds that such an Arbitrator fails to meet the qualifications agreed by the parties. In such case, the replacement of the Arbitrator shall be subject to Article 17 of these Rules.

## **Article 17.**

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### **Replacement of Arbitrators**

1. An Arbitrator shall refuse to resolve the dispute, and the parties shall have the right to request the replacement of an Arbitrator if the Arbitrator falls into one of the circumstances prescribed in paragraph 3 of Article 16 of these Rules.
2. A written refusal to resolve the dispute of an Arbitrator and/or a request of party(es) for the replacement of an Arbitrator shall be submitted

to the Centre. Where the Arbitral Tribunal has not yet been constituted, the Centre's President shall decide on the replacement of the Arbitrator. Where the Arbitral Tribunal has been constituted, the replacement of an Arbitrator shall be decided by the remaining members of the Arbitral Tribunal; if the remaining members of the Arbitral Tribunal fail to do so, the Centre's President shall make a decision. In any other circumstances, the Centre's President shall make a decision.

Where the Arbitral Tribunal comprises a Sole Arbitrator, the Centre's President shall make a decision on the replacement of the Sole Arbitrator.

The Decision of the remaining members of the Arbitral Tribunal or of the Centre's President on the replacement of an Arbitrator may be made without stating the reasons and shall be final.

3. Where the remaining members of the Arbitral Tribunal or the Centre's President decides to replace an Arbitrator, the substitute Arbitrator shall be selected or appointed in accordance with Article 12 or Article 13 of these Rules. The Arbitrator who has been replaced shall not be reselected by the parties or reappointed by the Centre's President.

Where the remaining members of the Arbitral Tribunal or the Centre's President decides not to replace an Arbitrator, the Arbitrator shall continue to resolve the dispute.

4. The Centre or the Arbitral Tribunal may fix the expenses for the replacement of an Arbitrator and may decide which party shall bear such expenses.
5. Where an Arbitrator dies or, for any event of force majeure or hardship, is unable to continue resolving the dispute, the selection or appointment of the substitute Arbitrator shall be subject to Article 12 or Article 13 of these Rules.

6. The newly constituted Arbitral Tribunal may, after consulting with the parties, reconsider the issues already presented in the hearings conducted by the former Arbitral Tribunal.

## **Article 18.**

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### **Power of the Arbitral Tribunal to verify facts**

The Arbitral Tribunal shall have the power to meet or discuss with one party with the participation of the other party by appropriate means in order to clarify the issues relevant to the dispute. The Arbitral Tribunal may, on its own initiative or at the request of a party or the parties, conduct fact-finding from a third person in the presence of the parties or after having notified the parties.

## **Article 19.**

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### **Power of the Arbitral Tribunal to collect evidence**

1. The Arbitral Tribunal shall have the power to request the parties to provide evidence, and the parties shall be obliged to provide evidence.
2. The Arbitral Tribunal shall have the power, at the request of a party or the parties, to request witnesses to provide information and documents relevant to the dispute.
3. The Arbitral Tribunal shall have the power, on its own initiative or at the request of a party or the parties, to seek inspection or valuation of the assets in dispute. The expenses for inspection or valuation shall be paid by the requesting party or allocated

by the Arbitral Tribunal. In all circumstances, if the inspection or valuation expenses are not paid in full, the Arbitral Tribunal shall resolve the dispute on the basis of the documents readily available.

4. The Arbitral Tribunal shall have the power, on its own initiative or at the request of a party or the parties, to seek expert advice. The Arbitral Tribunal shall have the power to request the parties to provide experts with relevant information or access to relevant documents, goods or assets. The experts shall submit a written report to the Arbitral Tribunal. After receiving the report, the Arbitral Tribunal shall send a copy of the report to the parties and request the parties to provide their written opinion on the report. The expenses for expert advice shall be paid by the requesting party or allocated by the Arbitral Tribunal. In all circumstances, if the expenses for expert advice are not paid in full, the Arbitral Tribunal shall resolve the dispute on the basis of the documents readily available.
5. If the Arbitral Tribunal or a party or the parties have already taken necessary measures to collect evidence without success, a written request may be submitted to the competent court to require support in accordance with the law.

## Article 20.

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### **Power of the Arbitral Tribunal to summon witnesses**

1. The Arbitral Tribunal shall have the power, at the request of a party or the parties and if the Tribunal considers it necessary, to summon witnesses to attend a hearing. The witness expenses shall be paid by the requesting party or allocated by the Arbitral Tribunal.

2. If a witness who has been duly summoned by the Arbitral Tribunal fails to attend the hearing without a legitimate reason and if the absence of the witness causes an obstacle to the dispute resolution, the Arbitral Tribunal shall submit a written request to the competent court to issue a decision summoning the witness to attend the hearing. The request shall specify the content of the dispute currently being resolved; the full name and the address of the witness; the reason why the witness needs to be summoned; and the time and the location where the witness is required to be present.
3. If a witness who has been duly summoned is absent, the Arbitral Tribunal may adjourn or proceed with the hearing on the basis of the documents readily available.

## **Article 21.**

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### **Power of the Arbitral Tribunal to order interim measures**

1. The Arbitral Tribunal may, at the request of a party, order one or more interim measures applicable to the parties in dispute. The interim measures shall comprise:
  - a) Prohibition of any change in the status quo of the assets in dispute;
  - b) Prohibition of any specific action by any party in dispute or order that any party in dispute take specific actions aimed at preventing conduct adverse to the arbitral proceedings;
  - c) Seizure of the assets in dispute;
  - d) Order of preservation, storage, sale or disposal of any of the assets of a party or the parties in dispute;

- dd) Order of provisional payment of money between the parties;
  - e) Prohibition of transfer of asset rights with respect to the assets in dispute.
2. The procedures for ordering, changing, supplementing and terminating the interim measures shall be in accordance with the relevant provisions of the law.
  3. During the arbitral proceedings, if a party has already requested a court to order one or more interim measures as provided in paragraph 1 of this Article and then requests the Arbitral Tribunal to order such interim measures, the Arbitral Tribunal shall reject the request. The party that has requested the court to order any interim measures shall immediately notify the Centre of the request.
  4. A request for interim measures addressed by any party to a court shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

## Article 22.

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### **Place of arbitration**

1. The place of arbitration shall be as agreed by the parties. Otherwise, the Arbitral Tribunal shall determine the place of arbitration it considers appropriate.
2. Unless otherwise agreed by the parties, the Arbitral Tribunal may conduct hearings at any location it considers appropriate. The Arbitral Tribunal may hold meetings by any means and at any location it considers appropriate.



## Article 23.

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### Language of arbitration

1. For disputes without a foreign element, the language of arbitration shall be Vietnamese.
2. For disputes with a foreign element or disputes to which at least one party is an enterprise with foreign investment capital, the language of arbitration shall be as agreed by the parties. Otherwise, the Arbitral Tribunal shall determine the language or languages to be used in the arbitral proceedings, taking account of the relevant circumstances including the language of the contract.
3. If a document is made in any language other than the language of arbitration, the Arbitral Tribunal or the Centre, where the Arbitral Tribunal has not yet been constituted, may request a party or the parties to provide the translation thereof.

## Article 24.

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### Applicable law

1. For disputes without a foreign element, the Arbitral Tribunal shall apply the law of Vietnam.
2. For disputes with a foreign element, the Arbitral Tribunal shall apply the law agreed by the parties; if the parties do not have any agreement on the applicable law, the Arbitral Tribunal shall determine the law it considers the most appropriate.
3. In all cases, the Arbitral Tribunal shall take account of the provisions of the contract, if any, between the parties in resolving the dispute.
4. The Arbitral Tribunal may apply any appropriate trade usage to resolve the dispute.

## Article 25.

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### Hearings

1. The Arbitral Tribunal shall fix the time and the location of hearings unless the parties have agreed otherwise. The Arbitral Tribunal may conduct the hearings by means of teleconference, video-conference or by any other appropriate means if the parties have agreed so.
2. A summon to attend a hearing shall be sent by the Centre to the parties within a period of time no less than 15 days prior to the date of the hearing unless the parties have agreed otherwise. In case of postponement of the hearing or where the Arbitral Tribunal holds further hearings, the period of time for sending summonses shall be determined by the Arbitral Tribunal unless the parties have agreed otherwise.
3. Hearings shall be conducted in camera unless the parties have agreed otherwise. The parties shall have the right to invite witnesses and persons who protect their legal rights and interests to attend hearings and shall notify the Arbitral Tribunal prior to the date of hearings. The Arbitral Tribunal, on its own initiative or at the request of a party, shall have the power to invite the organization or individual conducting the inspection or the valuation of assets and the experts as stipulated in Article 19 to attend hearings. The Arbitral Tribunal may permit other persons to attend hearings if the parties so consent.
4. At a hearing, if the Arbitral Tribunal considers that the parties have no further relevant document or evidence to submit, the Arbitral Tribunal shall declare such a hearing to be the final hearing. After the final hearing, the Arbitral Tribunal shall not be obliged to consider any additional document or evidence unless the parties have agreed otherwise.

## Article 26.

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### Postponement of hearings

1. A party or the parties may, if there is a legitimate reason, request the Arbitral Tribunal to postpone a hearing. A request for the postponement of the hearing shall be in writing, specifying the reason with evidence attached, and shall be submitted to the Centre. If the Centre does not receive the request for postponement at least 07 working days prior to the date of the hearing, the requesting party shall pay all expenses arising, if any.

The Arbitral Tribunal shall accept or reject the request for postponement and notify the parties accordingly.

2. Where necessary, the Arbitral Tribunal may postpone a hearing and notify the parties.

## Article 27.

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### Absence of parties

1. The Claimant who has been duly summoned to attend a hearing but fails to appear without a legitimate reason, or who leaves a hearing without permission of the Arbitral Tribunal shall be deemed to have withdrawn the Request for Arbitration. In such case, the Arbitral Tribunal shall only proceed with the dispute resolution if the Respondent so requests or if there is a Counterclaim.

If the Respondent has been duly summoned to attend a hearing but fails to appear without a legitimate reason or leaves a hearing without the permission of the Arbitral Tribunal, the Arbitral Tribunal shall proceed with the dispute resolution on the basis of the documents and evidence readily available.

2. Where there is a Counterclaim, the Respondent who has been duly summoned to attend a hearing but fails to appear without a legitimate reason, or who leaves a hearing without the permission of the Arbitral Tribunal, shall be deemed to have withdrawn the Counterclaim. In such case, the Arbitral Tribunal shall only proceed with the resolution of the Counterclaim if the Claimant so requests.
3. The Arbitral Tribunal may, at the request of the parties, rely on the documents and evidence readily available to proceed with a hearing without the presence of the parties.
4. The Arbitral Tribunal may proceed with a hearing when there is a request from one party to be absent.

## **Article 28.**

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### **Jurisdiction of the Arbitral Tribunal**

1. The Arbitral Tribunal shall have the power to rule on its own jurisdiction, including any objection with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the Arbitral Tribunal that the contract is null and void shall not entail automatically the invalidity of the arbitration clause.
2. Before considering the merits of the dispute, the Arbitral Tribunal shall consider the existence of the arbitration agreement; the validity of the arbitration agreement; whether or not the arbitration agreement is capable of being performed; and its jurisdiction regardless of whether or not there is any objection raised by any party.

Where the Arbitral Tribunal finds that the

arbitration agreement exists, is valid and capable of being performed, the Arbitral Tribunal shall proceed with the dispute resolution.

Where the Arbitral Tribunal finds that the arbitration agreement does not exist, is invalid or incapable of being performed, the Arbitral Tribunal shall make a decision to stay the dispute resolution.

3. The Arbitral Tribunal may make a separate Decision on jurisdiction of the Arbitral Tribunal or may decide on the jurisdiction of the Arbitral Tribunal in the Arbitral Award.
4. If any party finds that the Arbitral Tribunal is exceeding the scope of its jurisdiction, it shall raise an objection to the Arbitral Tribunal. The Arbitral Tribunal shall consider and decide such an objection.

## **Article 29.**

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### **Mediation**

The Arbitral Tribunal shall, at the request of the parties, conduct a mediation. If the mediation is successful, a minutes of successful mediation shall be drafted. The minutes shall be signed by the parties and the Arbitrators or the Sole Arbitrator. In such case, the Arbitral Tribunal shall make the Decision recognizing the successful mediation. The Decision of the Arbitral Tribunal shall be as valid as an Arbitral Award.

## **Article 30.**

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### **Stay of dispute resolution**

1. The resolution of the dispute shall be stayed in the following circumstances:

- a) The Claimant or Respondent being an individual dies without anyone inheriting his or her rights and obligations; the Claimant or Respondent being an organization has terminated its operation, become bankrupt, or been dissolved, consolidated, merged, demerged, separated, or has converted its organizational form without any organization taking over its rights and obligations;
  - b) The Claimant withdraws the Request for Arbitration, except where the Respondent files a Counterclaim;
  - c) The Claimant is deemed to have withdrawn the Request for Arbitration pursuant to paragraph 1 of Article 27 of these Rules, except where the Respondent requests to proceed with the dispute resolution;
  - d) The parties reach an agreement on the termination of the dispute resolution;
  - dd) There is a Decision of the Arbitral Tribunal pursuant to paragraph 2 of Article 28 of these Rules;
  - e) There is a Decision of a court pursuant to the law.
2. The Arbitral Tribunal shall make a decision staying the dispute resolution. If the Arbitral Tribunal has not yet been constituted, the Centre's President shall make a decision staying the dispute resolution.

### **Article 31.**

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#### **Principles for making Arbitral Awards and Decisions by an Arbitral Tribunal**

Where the Arbitral Tribunal comprises three Arbitrators, an Arbitral Award, a Decision by an Arbitral Tribunal is made by a majority decision. If there is no majority, the Arbitral Award shall be decided by the Presiding Arbitrator alone.

## Article 32.

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### Arbitral Awards

1. An Arbitral Award shall be in writing and contain the following main information:
  - a) Date, month, year and place of making the Arbitral Award;
  - b) Names and addresses of the Claimant and the Respondent;
  - c) Names of the Arbitrators or the name of the Sole Arbitrator;
  - d) Summary of the Request for Arbitration and matters in dispute; summary of the Counterclaim and matters in dispute, if any;
  - dd) Reasons for making the Arbitral Award unless the parties have agreed that no reasons are to be given;
  - e) Determination of the dispute resolution;
  - g) Period of time for implementing the Arbitral Award;
  - h) Allocation of the costs of arbitration and other relevant expenses;
  - i) Signatures of the Arbitrators or the signature of the Sole Arbitrator.
2. If an Arbitrator fails to sign the Arbitral Award, the Presiding Arbitrator of the Arbitral Tribunal shall record this in the Arbitral Award and state the reasons. In such case, the Arbitral Award shall still be valid.
3. The Arbitral Award shall be made no later than 30 days from the date on which the final hearing finishes.

4. The Arbitral Tribunal shall send the Arbitral Award to the Centre immediately after the date on which it is made. The Centre shall immediately send the original or certified copy of the Arbitral Award to the parties. The parties shall have the right to request the Centre to provide additional copies of the Arbitral Award and shall pay fees as provided by the Centre.
5. The Arbitral Award shall be final and binding on the parties.

### **Article 33.**

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#### **Correction and interpretation of the Arbitral Award; making an additional Arbitral Award**

1. Unless the parties have agreed otherwise on the period of time, within 30 days from the date of receipt of the Arbitral Award, a party may request the Arbitral Tribunal to correct any spelling, printing, or typographical error, or any error of a similar nature; any numerical errors caused by a mistake or incorrect computation in the Arbitral Award, and shall immediately notify the request to other party. If the Arbitral Tribunal considers the request legitimate and there is proof that the request has been notified to the other party, it shall make a Decision on correction within 30 days from the date of receipt of the request.
2. The Arbitral Tribunal may, on its own initiative, within 30 days from the date on which the Arbitral Award is made, correct any of the above-mentioned errors and make a Decision on correction.
3. Unless the parties have agreed otherwise on the period of time, within 30 days from the date of receipt of the Arbitral Award, a party may request the Arbitral Tribunal to interpret the Arbitral Award, and shall immediately notify the request to



the other party. If the Arbitral Tribunal considers the request legitimate and there is proof that the request has been notified to the other party, it shall make a Decision on interpretation within 30 days from the date of receipt of the request.

4. Unless the parties have agreed otherwise on the period of time, within 30 days from the date of receipt of the Arbitral Award, a party may request the Arbitral Tribunal to make an additional Arbitral Award with respect to the issues presented during the arbitral proceedings but not yet recorded in the Arbitral Award, and shall immediately notify the request to the other party. If the Arbitral Tribunal considers such request legitimate and there is proof that the request has been notified to the other party, it shall make an additional Arbitral Award within 30 days from the date of receipt of the request.
5. Where necessary, the Arbitral Tribunal may extend the periods of time for the correction or the interpretation of the Arbitral Award or the making of an additional Arbitral Award as stipulated in paragraphs 1, 3 and 4 of this Article respectively.
6. The Decision on correction or the Decision on interpretation, or the additional Arbitral Award shall constitute part of the Arbitral Award.
7. The correction or the interpretation of an Arbitral Award, or the making of an additional Arbitral Award shall be subject to Article 31 and paragraph 2 of Article 32 of these Rules.

## **Article 34.**

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### **Costs of arbitration**

Costs of arbitration include:

1. The expenses for remuneration of Arbitrators;

2. The Centre's administrative expenses;
3. The expenses for travelling, accommodation and other relevant expenses of the Arbitrators as stipulated in the written Guidelines of the Centre in force at the time of preparing the expense estimate; and the expenses for other assistance at the request of the Arbitral Tribunal.
4. The expenses for inspection and valuation of assets, the expenses for seeking expert opinion.

### **Article 35.**

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#### **Payment of costs of arbitration**

1. Unless otherwise agreed by the parties, upon submission of the Request for Arbitration, the Claimant shall pay the expenses in full as provided in paragraphs 1 and 2 of Article 34 of these Rules pursuant to the Schedule of Costs of Arbitration of the Centre in force at the time of submission of the Request for Arbitration. Where the Claimant fails to pay such expenses in full within the period of time fixed by the Centre, the Claimant shall be deemed to have withdrawn the Request for Arbitration, but shall not be prevented from re-submitting the Request for Arbitration.
2. Unless otherwise agreed by the parties, where there is a Counterclaim, the Respondent shall pay the expenses in full as provided in paragraphs 1 and 2 of Article 34 of these Rules pursuant to the Schedule of Costs of Arbitration of the Centre in force at the time of submission of the Counterclaim. Where the Respondent fails to pay such expenses in full within the period of time fixed by the Centre, the Respondent shall be deemed to have withdrawn the Counterclaim.

3. The expenses referred to in paragraph 3 of Article 34 of these Rules shall be paid in advance after the Arbitral Tribunal is constituted. The Centre shall consult with the Arbitral Tribunal to prepare the expense estimate and shall request a party or parties to pay an advance against the expenses and notify the parties. Unless otherwise agreed by the parties, the requested party or parties shall pay such advance(s) in full within 15 days from the date of receipt of the notice from the Centre. If the expenses are not fully paid in advance, the Centre may request the Arbitral Tribunal to temporarily suspend the dispute resolution. If so, one party may pay for the outstanding amount on behalf of the other party at the request of the Centre so that the dispute resolution continues. In case the expenses are still not fully paid in advance, the Arbitral Tribunal may temporarily suspend the dispute resolution.
4. The expenses referred to in paragraph 4 of Article 34 of these Rules shall be paid in accordance with paragraphs 3 and 4 of Article 19 of these Rules.
5. The Centre shall calculate the expenses as provided in paragraph 3 of Article 34 of these Rules and notify the parties and the Arbitral Tribunal before the Arbitral Tribunal makes the Arbitral Award. If the advance exceeds the actual expenses, the Centre shall refund the amount in excess. If the actual expenses exceed the advance, the parties shall pay the Centre the amount in shortage.

## **Article 36.**

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### **Decision as to the costs of arbitration and other expenses**

1. Unless otherwise agreed by the parties, the Arbitral

Tribunal shall allocate the costs of arbitration.

2. The Arbitral Tribunal shall have the power to decide that one party shall bear all or part of the legal costs or other reasonable expenses incurred by the other party.

## **Article 37.**

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### **Expedited procedure**

1. An Expedited procedure shall be applied in resolving dispute of parties if they have agreed so.
2. In conducting an Expedited procedure, the following regulations shall be applied:
  - a) The Arbitral Tribunal shall comprise a Sole Arbitrator unless the parties have agreed otherwise;
  - b) The Centre or the Arbitral Tribunal may shorten any time limits set out in these Rules;
  - c) The Arbitral Tribunal may, unless there is an objection of either party, rely on the documents and evidence readily available to proceed with a hearing without the presence of the parties. The Arbitral Tribunal may also conduct the hearing by means of teleconference, video-conference or by any other appropriate means unless there is an objection of either party.

## **Article 38.**

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### **General provisions**

1. The Centre does not itself resolve disputes. Disputes shall be resolved by Arbitral Tribunals.

2. The dispute resolution by arbitration at the Centre is conducted in camera unless the parties have agreed otherwise. The Arbitral Tribunal may introduce appropriate measures if either party is found to violate such provision.
3. The parties may agree to shorten the various time limits relating to the Centre or the Arbitral Tribunal in accordance with these Rules provided that such an agreement is approved by the Centre or the Arbitral Tribunal.
4. If a party becomes aware of a breach of the provisions of the laws on arbitration or of these Rules or of the arbitration agreement and proceeds with the arbitration without raising its objection to such breach within the time limits stipulated in these Rules, it shall be deemed to have waived its right to object. In the absence of regulations on such time limits, such objections must be raised before the Arbitral Tribunal declares the final hearing unless the parties have agreed otherwise.
5. In all matters not expressly provided for in these Rules, the Centre and the Arbitral Tribunal shall act in the spirit of these Rules and make all efforts for the dispute to be resolved in a fair and efficient manner.
6. The Centre's President may authorize the Centre's Vice Presidents to make decisions on his behalf as provided in these Rules.
7. The Centre's Secretaries shall perform their duties in arbitral proceedings as under these Rules and the Centre's regulations.
8. The Centre may authorize its branches to perform its duties specified in these Rules.

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## ANNEX 1: MODEL ARBITRATION CLAUSE

*"Any dispute arising out of or in relation with this contract shall be resolved by arbitration at the Vietnam International Arbitration Centre (VIAC) in accordance with its Rules of Arbitration".*

*or*

*"Any dispute arising out of or in relation with this contract shall be resolved by arbitration at the Vietnam International Arbitration Centre at the Vietnam Chamber of Commerce and Industry (VIAC) in accordance with its Rules of Arbitration".*

Parties may wish to consider adding:

- (a) the number of arbitrators shall be [one or three].
- (b) the place of arbitration shall be [city and/or country].
- (c) the governing law of the contract [is/shall be] the substantive law of [ ].\*
- (d) the language to be used in the arbitral proceedings shall be [ ].\*\*

**Note:**

- \* For disputes which involve a foreign element.
- \*\* For disputes which involve a foreign element or disputes in which at least one party is an enterprise with foreign investment capital.

## ANNEX 2: EXPEDITED PROCEDURE MODEL CLAUSE

*"Any dispute arising out of or in relation with this contract shall be resolved by arbitration at the Vietnam International Arbitration Centre (VIAC) in accordance with its Rules of Arbitration.*

*The parties agree that any arbitration commenced pursuant to this clause shall be conducted in accordance with the Expedited procedure set out in Article 37 of the VIAC Rules of Arbitration."*

Parties may wish to consider adding:

- (a) the place of arbitration shall be [city and/or country].
- (b) the governing law of the contract [is/shall be] the substantive law of [ ].\*
- (c) the language to be used in the arbitral proceedings shall be [ ].\*\*

**Note:**

- \* For disputes which involve a foreign element.
- \*\* For disputes which involve a foreign element or disputes in which at least one party is an enterprise with foreign investment capital.

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**RULES OF ARBITRATION  
OF THE VIETNAM INTERNATIONAL  
ARBITRATION CENTRE**

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