

**RULES FOR INTERNATIONAL COMMERCIAL ARBITRATION AND
STANDARDS FOR CONCILIATION OF THE UNITED NATIONS ECO-
NOMIC COMMISSION FOR ASIA AND THE FAR EAST**

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ECAFE RULES FOR INTERNATIONAL COMMERCIAL ARBITRATION

Article I

GENERAL

1. (a) The ECAFE Rules for International Commercial Arbitration (hereinafter called "the ECAFE Rules") are applicable to the arbitration of disputes arising from the international trade of the ECAFE region.

(b) Disputes arising from international trade would include disputes arising out of contracts concerning industrial, financial, engineering services or related subjects involving residents of different countries.

(c) Disputes arising from the international trade of the ECAFE region would include the following:

- (i) Disputes arising out of contracts between residents of different countries within the region,
- (ii) Disputes arising out of contracts between residents of different countries within and outside the region,
- (iii) Disputes arising out of contracts between residents of different countries outside the region in cases where the contract involved performance in the region or where other factors were related to the region.

2. The ECAFE Rules shall apply in cases where parties have agreed that disputes which have arisen or which may arise out of a contract made between them shall be referred to arbitration under the ECAFE Rules. The agreement of parties to resort to arbitration under the ECAFE Rules may be included in their contract or, if not so included, may be concluded separately by the parties after a dispute has arisen.

3. Disputes referable to arbitration under the ECAFE Rules may include those to which a government or state trading agency is a party.

4. The ECAFE Centre for Commercial Arbitration (hereinafter called "the ECAFE Centre") shall not itself hear and determine disputes.

Article II

APPOINTMENT OF ARBITRATORS

1. The parties may select an arbitral institution to hear and determine their dispute, or if they so choose, select a sole arbitrator or an arbitral tribunal.

2. The parties shall be free to choose arbitrators of any nationality or any arbitral institution they consider appropriate.

3. Unless the parties have in their original agreement or later by stipulation selected an arbitral institution to hear and determine their dispute or appointed their arbitrator/s or an appointing authority, the party who wishes to resort to arbitration shall notify the other party to that effect and propose:

- (a) the appointment of a sole arbitrator, or
- (b) the appointment of three arbitrators, each party appointing an arbitrator and the two arbitrators thus appointed choosing the presiding arbitrator, or
- (c) the designation of a specific arbitral institution which would apply the ECAFE Rules in the arbitration of the dispute, or
- (d) the designation of a specific person or institution who would appoint a sole arbitrator or a presiding arbitrator or such an arbitral institution.

4. For the appointment of the arbitrator/s, or, alternatively, for the selection of an appointing authority, consideration may be given to the lists of arbitrators and the lists of appointing authorities maintained by the ECAFE Centre.

5. If within a period of forty-five days, a sole arbitrator has not been appointed or an arbitral institution has not been designated or, in the case of a three-man arbitration, either of the two arbitrators to be appointed by the parties or the presiding arbitrator have not been appointed, the matter shall be referred to the Special Committee established in accordance with Article V below which shall make the necessary appointment or designation. Alternatively, the Special Committee may at its discretion select an authority to make the necessary appointment or designation.

Article III

REMOVAL, DEATH OR INCAPACITY OF THE ARBITRATOR

1. Either party may challenge an arbitrator where circumstances exist that cause justifiable doubts as to his impartiality or independence. Such challenges shall be passed on in the first instance by the arbitrator concerned.

2. Should the challenge be rejected by the arbitrator an appeal may be made to the ECAFE Centre which shall for this purpose utilize the Special Committee established in accordance with Article V below to determine whether or not the challenge is justified. The decision of the Special Committee shall be final.

3. Where a challenge is sustained, a substitute arbitrator shall be appointed by the person or authority originally empowered to appoint the arbitrator. If the appointment is not made within a period of thirty days after the sustaining of the challenge, the matter shall be referred to the Special Committee established in accordance with Article V below which shall make the necessary appointment or designate an authority to make the necessary appointment.

4. In the event of the death or incapacity of an arbitrator, a substitute arbitrator shall be appointed in accordance with the procedure set out in paragraph 3 above.

Article IV

THE PLACE OF ARBITRATION

1. Where the parties have not agreed in their contract or later by stipulation on the place of arbitration or where the arbitrator/s appointed by the parties has/have not

determined the place, the parties shall endeavour to reach agreement as to the place of arbitration by taking into consideration the following among other relevant factors:

- (a) the convenience of the parties;
 - (b) the location of the goods and relevant documents;
 - (c) the availability of witnesses, surveys and of pre-investigation reports;
 - (d) the recognition and enforcement of the arbitration agreement and the award;
- and
- (e) the advantages, if any, of the arbitration being held in the country of the respondent.

2. If the parties are still unable to agree on a place of arbitration or on any other procedure for its determination they shall have recourse for the determination of a place of arbitration to the Special Committee established in accordance with Article V below. In such case the Special Committee shall, in making its determination as to the place of arbitration, take into consideration the factors listed above in paragraph 1.

Article V

THE SPECIAL COMMITTEE OF ECAFE

The Special Committee of ECAFE shall be composed of seven persons selected by the Executive Secretary of ECAFE from among all the representatives on the Economic Commission for Asia and the Far East. The Special Committee will be constituted when required for each case and the Executive Secretary will use his discretion in selecting its members, taking into account all relevant factors in the particular case.

Article VI

THE CONDUCT OF ARBITRAL PROCEEDINGS

1. The arbitrator/s shall, subject to these rules, conduct the arbitration in such manner as he/they consider appropriate provided that the parties shall have the right to present their cases and shall be treated with absolute equality.

2. All documents submitted or information given by one party to the arbitrator/s shall be transmitted at the same time to the other party.

3. The arbitrator/s shall be entitled to decide on the existence and validity of the arbitration agreement, to determine his/their own competence and jurisdiction and to interpret these Rules.

4. The arbitrator/s shall determine the period within which the respondent shall be required to deliver in writing his defence. The respondent shall be entitled to make within the same period a counterclaim arising out of the same arbitration agreement.

5. Proceedings shall normally be conducted on the basis of documents, in view of the distances that usually separate the places of residence of parties engaged in the international trade of the ECAFE region. However, if the parties so agree or should the arbitrator/s so decide, the arbitrator/s may also have oral hearings.

6. The arbitrator/s shall be entitled to take any interim measure of protection which he/they deems/deem necessary in respect of the subject matter of the dispute.

7. The arbitrator/s shall be entitled to fees and shall be entitled to require security for the costs of the arbitration proceeding and his/their fees.

8. The parties shall have the right to be represented or assisted at the hearing by persons of their choice.

9. In the case of an arbitral tribunal, decisions shall be made by a majority of votes. Failing a majority, the decision of the presiding arbitrator shall be the decision of the tribunal.

Article VII

THE AWARD

1. The arbitral award shall be made within a period of nine months after the appointment of the presiding arbitrator or the sole arbitrator as the case may be. This period may be extended by agreement between the parties or by the arbitrator/s should he/they consider such an extension essential.

2. The arbitrator/s may, subject to the provisions of paragraph 1 above, make interim, interlocutory or partial awards.

3. In the case of an arbitral tribunal the award shall be made by a majority of votes. Failing a majority the presiding arbitrator alone shall make the award.

4. (a) The award shall be based upon the law determined by the parties to be applicable to the substance of the dispute. Failing any indication by the parties as to the applicable law, the arbitrator/s shall apply the law he/they consider/s applicable in accordance with the rules of conflict of laws. In both cases the arbitrator/s shall take account of the terms of the contract and trade usages.

(b) The arbitrator/s shall, decide *ex aequo et bono* (*amiables compositeurs*) if the parties authorize the arbitrator/s to do so, and if he/they may do so under the law applicable to the arbitration.

5. The award shall be made in writing and shall be signed by the arbitrator/s. In the case of an arbitral tribunal, the signature of the majority, or if no majority is obtainable, that of the presiding arbitrator, shall suffice, provided the award states the reason for the absence of the signatures of the other arbitrators.

6. Authentic copies of the award shall be communicated to the parties by the sole arbitrator or the presiding arbitrator.

7. Unless otherwise agreed between the parties, the costs of the arbitration shall be fixed in the award. In general costs shall be borne by the unsuccessful party, but the arbitrator/s may, at his/their discretion, apportion the costs between the parties.

Article VIII

MISCELLANEOUS PROVISIONS

1. *Settlement.* In case the parties agree on a settlement of the dispute during the arbitration proceeding, the settlement shall be recorded by the arbitrator/s in the form of an arbitral award made on agreed terms.

2. *Interpretation of the Award.* Within a period of thirty days after the making of the award either party may, with notice to the other party, request the arbitrator/s for an authentic interpretation of the award. Such interpretation shall be given within one month of the date of the request and shall be communicated to both parties by the arbitrator/s.

3. *Correction of the Award.* Within a period of thirty days after the making of the award, the arbitrator/s shall correct any error in computation, any clerical or typographical error, or any other error of a similar nature in the award.

4. *Circumstances Not Otherwise Provided For.* In circumstances not specifically provided for in the preceding rules, the arbitrator/s shall follow the procedure most in conformity with the spirit of the ECAFÉ Rules.

ECAFE STANDARDS FOR CONCILIATION

1. ECAFE shall invite each of the main Chambers of Commerce of the region through their respective Governments to set up a panel of businessmen, both nationals and foreign residents, of high standing and good repute, who agree to sit on Conciliation Committees, upon the request of parties.
2. Parties between whom a difference has arisen may agree to try to settle it by conciliation. Then each party is to appoint one conciliator, and the conciliators thus appointed shall appoint another conciliator who will preside over the Conciliation Committee.
3. Each of the parties may choose one conciliator from the nationals of his country included in the panel of the Chamber of Commerce located in the place agreed upon for conciliation. In that case, it is desirable that the chairman of the Conciliation Committee be a national of a country other than those of the parties.
4. The duty of the Conciliation Committee shall be to seek a friendly and speedy solution of the difference. The Committee shall hear the parties or their representatives. The parties or their representatives may be assisted by counsel or solicitors. In the latter case, it is desirable that the party who intends to be so assisted should inform the other party of his intention beforehand.
5. If both parties cannot appear in person or be represented, the Committee shall acquaint itself with the details of the case through the written statements sent by each party.
6. Each party is at liberty to accept or to reject the terms of settlement proposed by the Committee.
7. Should a settlement not result, the parties shall be at liberty to refer their dispute to arbitration or, if they are not bound by an arbitration clause, to bring an action at law.
8. Nothing that has transpired in connexion with the proceedings before the Committee shall in any way affect the legal rights of any of the parties to the dispute, whether in an arbitration or in a court of law.
9. No person having sat on a Conciliation Committee for the settlement of a dispute may be appointed arbitrator for the same dispute, unless the parties agree to the contrary.
10. If the parties agree to choose a single conciliator acceptable to them, there is no objection to their doing so.