

# **AUSTRALIAN CENTRE FOR INTERNATIONAL COMMERCIAL ARBITRATION (ACICA)**

*Doug Jones and Björn Gehle*

## **I. BASIC INFORMATION**

### ***A. History and Background of the Institution***

The Australian Centre for International Commercial Arbitration (ACICA) is Australia's international arbitration institution. Established in 1985 as a non-profit public company the primary objectives of ACICA are to support and facilitate international arbitration and mediation and to promote Sydney and Australia as a venue for both.

ACICA's former role in administering arbitrations was mainly limited to the appointment of arbitrators and the holding of cost deposits for ad hoc arbitrations under the UNCITRAL Arbitration Rules. This changed significantly in 2005 when ACICA launched its own institutional arbitration rules, known as the ACICA Arbitration Rules ("ACICA Rules" or "Rules") for which it became the administering body for arbitrations under those rules. In addition to the administration of arbitration proceedings ACICA offers practical assistance to facilitate arbitration hearings by providing various services, such as the provision of hearing facilities, transcription and information technology services. ACICA's educational activities include holding regular seminars and conferences to enhance the knowledge and understanding of international arbitration throughout the Asia-Pacific region.

ACICA operates from three offices in Australia, with its head office in Sydney and a satellite office each in Melbourne and in Perth. ACICA has entered into a number of co-operative arrangements with other international arbitral institutions around the world such as the Singapore International Arbitration Centre (SIAC), the Hong Kong International Arbitration Centre (HKIAC), the Stockholm Chamber of Commerce - Arbitration Institute (SCC) and the American Arbitration Association (AAA). It is also a founding member of the Asia Pacific Regional Arbitration Group (APRAG) which was established in 2004, a regional federation of over 30 arbitration associations which aims to improve standards and knowledge of international arbitration. In addition, ACICA is also the nominated Australian contact for

proceedings under the International Centre for the Settlement of Investment Disputes (ICSID) in Australia.

Within Australia, ACICA operates in close co-operation with the Australian Commercial Dispute Centre (ACDC). This relationship enables the two organisations to work together on promoting alternative dispute resolution and offering an efficiently administered full range of commercial dispute resolution services. While ACICA's primary focus is on international disputes, ACDC is predominantly involved in Australian domestic disputes.

ACICA has a Board of Directors which is made up of prominent international arbitrators and arbitration practitioners. ACICA's directors are appointed by various bodies including the Law Council of Australia, the Australian Bar Association, the Chartered Institute of Arbitrators, the Institute of Arbitrators and Mediators Australia, the International Chamber of Commerce Australia, the Attorney-General of the Commonwealth of Australia and the Attorney-General of New South Wales. Other directors are appointed by the corporate members of ACICA and others are ACICA Board nominees.

ACICA's Executive (ie. its *office-bearers*) comprises the president, three vice-presidents and a treasurer. The Executive will, with few exceptions, consider and render decisions with respect to the appointment and challenge of arbitrators under the ACICA Rules.

ACICA's most important function is to administer arbitrations conducted under both the ACICA Arbitration Rules and the ACICA Expedited Arbitration Rules (Expedited Rules).

The ACICA Rules came into force in 2005 and have since gained broad international acceptance. They represent an important milestone for the international arbitration industry and its users particularly in Australasia, a region which is experiencing a rapidly growing interest in and use of international arbitration.

There exist a range of reasons why ACICA Rules are commendable. Foremost, they are clearly drafted, modern, commercial, straightforward and flexible. Although the Rules are especially adapted to arbitration in Model Law jurisdictions they are just as suitable for arbitration in non-Model Law jurisdictions. The Rules also contain a number of innovative and in some respect unusual provisions which aim to allow arbitrations to proceed more efficiently, and also address aspects of arbitration procedure which required clarification and guidance in order to provide additional benefit to the parties and the arbitrators. As will be addressed in more detail in Part II below, some of these provisions were drafted

with particular court decisions in mind. However, of most interest will be provisions such as those dealing with confidentiality (Article 18), interim measures of protection (Article 28), the taking of evidence (Article 27) and the remuneration of arbitrators (Article 40).

The ACICA Rules also provided the impetus for ACICA Expedited Arbitration Rules (Expedited Rules) which were released in 2008 and which have been prepared predominantly for the purpose of arbitrating smaller, less complex disputes. ACICA itself recommends the Expedited Rules for disputes where the amount in dispute does not exceed A\$250,000. However, regardless of the amount in dispute, the Expedited Rules may not be appropriate for complex, multi-party or multi-issue disputes. As expressed in Article 3.1 the overriding objective of the Expedited Rules is to provide arbitration that is quick, cost effective and fair, considering especially the amounts in dispute and complexity of issues or facts involved.

The ACICA Rules offer a good balance between the provision of necessary services and supervision by the institution on the one hand and the maintenance of flexibility and party autonomy on the other. ACICA's role under the Rules is therefore to provide for the essential support and service throughout the arbitration without making the arbitration one that is 'highly supervised' as is the case, for example, in ICC arbitrations.

Broadly, ACICA's role during the arbitration includes:

- extending periods of time (Article 3.4);
- determining the number of arbitrators if this is not agreed between the parties (Article 8);
- appointing arbitrators upon default of a party nomination or upon default of a joint party or joint co-arbitrator nomination (Articles 9 to 11);
- deciding on the challenges of arbitrators in the event of a dispute (Article 14);
- checking the basic requirements of the notice of arbitration (Articles 21 and 22);
- determining the fee rate of the arbitrator(s) in case of a disagreement (Article 40); and
- handling and holding of advance deposits on the arbitration costs.

Whereas most articles in the Rules merely refer to "ACICA" as the relevant decision making body, Article 43.1 of the Rules offers some

clarification in stating that “[d]ecisions made by ACICA will be made by the ACICA Board of Directors, or by any person(s) to whom the Board of Directors has delegated decision making authority.” With regard to decisions concerning the appointment of arbitrators, these have been delegated to the ACICA Executive comprising ACICA’s president, the vice presidents and the treasurer.

It is important to point out that most time limits under the ACICA Rules are generally shorter than under many of the other institutional arbitration rules. As a consequence, delay tactics which are regularly adopted by some parties do not have the same impact on the arbitration proceedings as may be the case under different arbitration rules, which gives these Rules a great advantage.

### **B. Model Clause**

ACICA recommends the following Model Clause:

Any dispute, controversy or claim arising out of, relating to or in connection with this contract, including any question regarding its existence, validity or termination, shall be resolved by arbitration in accordance with the ACICA Arbitration Rules. The seat of arbitration shall be Sydney, Australia **[or choose another city]**. The language of the arbitration shall be English **[or choose another language]**. The number of arbitrators shall be one **[or three, or delete this sentence and rely on Article 8 of the ACICA Arbitration Rules]**.

Parties who would like to adopt arbitration under ACICA’s Expedited Arbitration Rules should use the following Model Clause:

Any dispute, controversy or claim arising out of, relating to or in connection with this contract, including any question regarding its existence, validity or termination, shall be resolved by arbitration in accordance with the ACICA Expedited Arbitration Rules. The seat of arbitration shall be Sydney, Australia **[or choose another city]**. The language of the arbitration shall be English **[or choose another language]**.

### ***C. Arbitrators***

ACICA maintains a panel of international arbitrators. However, there is no requirement for parties to select arbitrators from the panel list and they are free to appoint the arbitrator of their choice. While the same applies for arbitrators appointed by ACICA, in practice the list of panel arbitrators is usually the first resort for the selection of an appropriate arbitrator by ACICA.

Arbitrators are not required under the Rules to have a particular qualification (other than being impartial and independent) but they would need to demonstrate an appropriate level of experience to be included in ACICA's panel list.

There is no default number of arbitrators under the ACICA Rules if the parties have failed to specify such. Instead, Article 8 of the Rules provides that if the arbitration agreement does not specify the number of arbitrators and the parties cannot agree on the number of arbitrators within 15 days after receipt of the notice of arbitration ACICA shall determine the number of arbitrators taking into account all relevant circumstances. This presents a very useful tool to determine (or have determined) the number of arbitrators at a time when the relevant information concerning the value and complexity of a dispute has crystallised, and an informed decision on the appropriate number of arbitrators can be made. This ultimately leads to significant cost savings for the parties.

There appears to be some ambiguity in the wording of the Rules whether the parties directly appoint the arbitrator(s) or whether they nominate them with the appointment being made by ACICA. Although the wording of Rules 9 and 11 seems to suggest that the parties appoint the arbitrator(s) directly, Article 12.1 on the other hand allows the interpretation that the appointment of arbitrators would at least require confirmation of some sort by ACICA. Article 12.1 states that "[w]here the names of one or more persons are proposed for appointment as arbitrators" information about the qualification of the arbitrator shall be provided to ACICA. Unlike Rule 12.2 this requirement is not limited to circumstances in which ACICA is to appoint an arbitrator upon default of one of the parties. In practice, however, ACICA has not (at least not yet) adopted a formal confirmation process for party appointed arbitrators.

Where a sole arbitrator is to be appointed the parties are, in the first instance, asked to agree on an arbitrator. Article 9.1 of the Rules recommends that either party may propose to the other the

names of one or more persons. This is usually done in the form of an exchange of letters in which the candidates are eliminated by objection. If the parties encounter difficulties using this process they may request ACICA to provide a list of suitable arbitrators from which each party can then strike through the names of those candidates to which they object and rank the remaining names in accordance with their preferences.

If the parties do not reach agreement on the sole arbitrator within 30 days from a proposal being received (ie. proposal for an arbitrator candidate), the ACICA will appoint the sole arbitrator (Article 9.2). Article 9.3 of the Rules provides some useful guidance in relation to the circumstances ACICA ought to consider in appointing the arbitrator, including the independence and impartiality of the arbitrator as well as the 'advice' that the arbitrator ought to be of a nationality other than the nationality of the parties.

The appointment process for a three member tribunal is almost the same as under the UNCITRAL Arbitration Rules. The parties may include the appointment of each of the party appointed arbitrators in the Notice of Arbitration (or the Answer to the Notice of Arbitration), but they are not bound to do so (Articles 4.4 and 5.3). If they do not, then the appointments must be made in subsequent correspondence as is contemplated by Article 10.1 of the Rules. Accordingly, each party is to appoint one arbitrator and the two arbitrators thus appointed shall choose the chairperson of the tribunal.

If the respondent party has not appointed arbitrator within 30 days after receipt of the claimant's notification of its party appointed arbitrator, or where the two party appointed arbitrators have not agreed on the choice of a chairperson of the tribunal the appointment of that arbitrator will be made by ACICA.

As with most modern arbitration rules the ACICA Rules contain special provisions for the appointment of arbitrators in a multi-party dispute. The Rules expressly state that acts of multiple parties (ie. multiple claimants or multiple respondents) shall have no effect, unless the multiple claimants or multiple respondents have acted jointly and provided written evidence of their joint agreement as to the appointment of the arbitrator (Article 11.1). If a three member tribunal is to be appointed and the multiple claimants or multiple respondents are unable to jointly agree on the appointment of their party appointed arbitrator all three tribunal members will be appointed by ACICA, unless the parties agree on a different method for the constitution of the tribunal.

The appointment process for arbitrators under ACICA's Expedited Arbitration Rules is slightly different to that described above. Most notably, the Expedited Rules provide that there is to be *one arbitrator* (Article 8.1) which shall be appointed by ACICA within 14 days from the commencement of the arbitration (Article 8.2). In this respect the Expedited Rules make a clear choice to limit party autonomy in favour of the expedition of the arbitration proceedings.

The ACICA Rules require that prospective arbitrators disclose in writing (to those who approach him or her in connection with his or her possible appointment) any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence, (Article 13.1). This is in addition to the disclosure usually required by arbitral institutions at the appointment stage. The benefit of this is that conflicts of interest are flushed out at an early stage before the arbitrator is appointed.

Articles 13 and 14 of the Rules deal with the challenge of an arbitrator. Although being subject to the applicable arbitration law at the seat jurisdiction, Article 13.2 of the Rules applies the *justifiable doubts* test in determining whether the arbitrator is held to be impartial and independent. A party may challenge the arbitrator appointed by it only for reasons of which it becomes aware after the appointment. This agrees with the applicable requirements and tests under the *IBA Guidelines on Conflicts of Interest in International Arbitration*.

If a party wishes to challenge an arbitrator it is required to submit a notice of challenge to the other party or parties, any other members of the tribunal and to ACICA within 15 days of the appointment or within 15 days after it became aware of the circumstances giving rise to the challenge (Article 14.1). If the other party does not agree to the challenge and the challenged arbitrator does not resign ACICA will make a decision on the challenge (Article 14.4). Upon the successful challenge of the arbitrator (or his or her resignation) a new arbitrator is then appointed in accordance with the general provisions applicable to the appointment of the arbitrators.

#### ***D. Costs, Fees and Other Service Charges***

ACICA's institutional fees consist of a non-refundable *registration Fee* of A\$2,500 (Australian dollars), which becomes due with the Notice of Arbitration, and an *administration Fee*. The amount of the

administration fee is calculated in accordance with Schedule 1 in Appendix A of the Rules and is subject to the amount in dispute (see below for the administrative fees as at 1 August 2009)

<b>Amount in Dispute</b>	<b>Administrative Fees</b>
\$1 to \$500,000	1% of the amount in dispute
\$500,001 to \$1,000,000	\$5,000 plus 0.5% of the amount in dispute above 500,000
\$1,000,001 to \$10,000,000	\$7,500 plus 0.25% of the amount in dispute above \$1,000,000
\$10,000,001 to \$100,000,000	\$30,000 plus 0.01% of the amount in dispute above \$10,000,000
Over \$100,000,000	\$39,000 plus 0.02% of the amount in dispute above \$100,000,000 up to a maximum of \$60,000

For the purpose of determining the amount in dispute, claims, counterclaims and set-off defences are added together, but exclude any claims for interest. If the amount in dispute is not specified in the pleadings, the amount in dispute will be determined by the arbitral tribunal (Article 2.2 in Appendix A). For arbitrations under the ACICA's Expedited Arbitration Rules the registration fee is the same (A\$2,500) but the administrative fees are lower than under the general arbitration rules (see Schedule 1 in Appendix A of the Expedited Rules).

Arbitrators are remunerated on a time spent basis (ie. an hourly rate) rather than a fixed fee or fee range based on the amount in dispute, as is the case under many other institutional rules. While this approach has of course its advantages as well as disadvantages, those will not be discussed here in any detail. The wording of Article 40.1, "[u]nless agreed otherwise," suggests that the parties may agree with the arbitrator(s) on a different methodology for the remuneration, though in practice this is very uncommon.

One of the rather unique, and therefore noteworthy, features of the Rules is that if the arbitrator(s) and the parties cannot agree on a hourly rate for the arbitrator's remuneration, the hourly rate will be set by ACICA taking into account the nature of the dispute, the amount in dispute as well as the standing and experience of the arbitrator (Articles 40.2 and 40.4).



## **II. ARBITRAL PROCEDURE BEFORE THE ACICA**

### ***A. Commencement of Proceedings***

A noteworthy characteristic concerning the commencement of the arbitration is the option for the claimant to include a Statement of Claim with the Notice of Arbitration (Article 4.4(c)). The corresponding provision for the respondent (with regard to the Statement of Defence) is found in Article 5.3(c). However, it should be mentioned that there is no obligation for the respondent to submit its Statement of Defence together with the Answer to the Notice of Arbitration if the claimant has chosen to include the Statement of Claim with the Notice of Arbitration. Nevertheless, the choice to include the Statement of Claim (or Defence) with the Notice of Arbitration (or Answer) has at least some potential for time and costs savings in the arbitration should the parties decide to adopt this process.

### ***B. Interim Measures***

Probably one of the most talked about provisions in the ACICA Rules is Article 28 which deals with interim measures of protection. Different to many other arbitration rules which merely empower the arbitral tribunal to order interim measures (or at most provide a very limited definition of interim measures), the Article 28 provides a clear and comprehensive definition of the scope of interim measures which are available and sets out the requirements which a party must satisfy in order to obtain such measures.

Article 28 of the Rules follows closely Articles 17 to 17G of the UNCITRAL Model Law as amended in 2006, and makes the ACICA Rules one of very few arbitration rules available which has incorporated these new concepts. In summary, some of the noteworthy features in relation to interim measures include:

- the arbitral tribunal must give reasons for the awarding of interim measures (Article 28.1)
- a clear definition of interim measures, expressly including the provision of security for legal or other costs, which allows a party to easily identify the type of protection that it may seek and all necessary requirements it has to meet (Article 28.2)

- the arbitral tribunal may require the party requesting the interim measures to provide security as a condition to granting the interim measure (Article 28.4)
- if the tribunal later determines that the interim measure should not have been granted it may decide that the requesting party is liable for any damages caused to the other party by the measures (Article 28.8)

It is worth pointing out that Article 28 of the Rules does not incorporate the very controversial provisions on ex parte interim measures and provisional orders which are included in Article 17 B (2) of the Model Law. Article 28.8 further provides clarification that the tribunal's power to grant interim measures does not prejudice a party's right to apply to any competent court for interim measures.

### ***C. Evidence Procedure***

Arbitration rules rarely provide much guidance on the procedure which ought to be adopted in relation to the evidentiary aspects of the arbitration. Article 27.2 of the Rules, however, states that "*The Arbitral Tribunal shall have regard to, but is not bound to apply, the International Bar Association Rules on the Taking of Evidence in International Commercial Arbitration.*" This at least provides a useful starting point in relation to the evidentiary process and may be a useful gap-filler where certain matters have not been expressly settled between the parties and the tribunal.

### ***D. Confidentiality***

Since the infamous decision of the High Court of Australia in *Esso Australia Resources Ltd. v Plowman* in 1995, there has been much discussion about *confidentiality* in arbitration – at least in Australia. It therefore comes at no surprise that the ACICA Rules deal with this aspect in much detail. According to Article 18.2 of the Rules all matters relating to the arbitration (including the existence of the arbitration), the award, any material created for the purpose of the arbitration and documents produced by another party in the proceedings (which are not in the public domain) shall be treated as confidential.

Further, Article 18.2 sets out clearly defined exceptions for when confidentiality does not apply, for example for the purpose of

applications to a competent court, for the purpose of enforcing the award or if disclosure is required by law, a competent court or any regulatory body. An important expansion of the scope of confidentiality is included in Article 18.4 which requires that the party calling a witness is responsible that that witness is maintaining the same degree of confidentiality as is required by that party.

### ***E. Expedited Arbitration Rules***

The overriding objective of the Expedited Rules is to provide arbitration that is quick, cost-effective and fair, considering especially the amount in dispute and complexity of issues or facts involved. This overriding objective has also been embedded in many of the features provided for under the Expedited Rules.

For example, the Expedited Rules envisage a document-only procedure with no oral hearing unless exceptional circumstances exist (as will be determined by the arbitrator) and either the arbitrator or the parties require a hearing to take place (Article 13.2). If a hearing is to take place it shall be no longer than a day (Article 13.3). The threshold for conducting an oral hearing has been set very high so as to avoid oral hearings becoming a regular occurrence rather than the exception.

The Expedited Rules allow no discovery (Articles 23.4). The provision in Article 23.4 that there is to be no discovery must be seen in the context of the general burden on a person seeking to establish a claim or a defence to provide the necessary evidence in support, including the production of any relevant document (Article 23.1). The wording in Article 23.4 that there shall be no discovery "*other than in accordance with Article 23.5*" is somewhat unfortunate, in that it appears to suggest that there is an exception to the concept of 'no-discovery' if the requirement of article 23.5 are met. However, Article 23.5 does not deal with discovery and merely reflects current practice in international arbitration, particularly in the civil law tradition whereby an arbitrator can order production of documents if he or she believes that a party has not disclosed a relevant document, and draw adverse inferences from any non-disclosure. Therefore, Article 23.4 should be read as: "[t]here shall be no discovery."

Finally, Article 22 of the Expedited Rules limits the scope of any extension of time. The general rule is that any times fixed under the Rules may only be varied by agreement between the arbitrator and

the parties (Article 22.1). However, in exceptional circumstances (as determined by the arbitrator) the arbitrator may vary the times fixed under the rules without the agreement with the parties to give effect to the overriding objective of the rules and if the arbitrator is satisfied that a variation of any fixed time or times is required in the interest of justice. Even then, the arbitrator may only extend the time to a maximum total period of 14 days for actions by a party and to a maximum total period of 30 days for actions by the arbitrator.

### **III. APPENDIX**

#### ***A. Rules of the ACICA***

##### MODEL ARBITRATION CLAUSE

Any dispute, controversy or claim arising out of, relating to or in connection with this contract, including any question regarding its existence, validity or termination, shall be resolved by arbitration in accordance with the ACICA Arbitration Rules. The seat of arbitration shall be Sydney, Australia [or choose another city]. The language of the arbitration shall be English [or choose another language]. The number of arbitrators shall be one [or three, or delete this sentence and rely on Article 8 of the ACICA Arbitration Rules].

##### SECTION I: INTRODUCTORY RULES

#### 1 ACICA Arbitration Rules

These rules ("Rules") are the rules of arbitration of the Australian Centre for International Commercial Arbitration ("ACICA") and may be referred to as the "ACICA Arbitration Rules".

#### 2 Scope of Application

2.1 Where parties agree in writing that disputes shall be referred to arbitration under the ACICA Arbitration Rules then such disputes shall be resolved in accordance with these Rules subject to such modification as the parties may agree in writing.

- 2.2 These Rules shall govern the arbitration except that where any of these Rules are in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.
- 2.3 By selecting these Rules the parties do not intend to exclude the operation of the UNCITRAL Model Law on International Commercial Arbitration.
- 3 Notice, Calculation of Periods of Time
- 3.1 For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received if it is physically delivered to the addressee or to the addressee's residence, place of business or mailing address, or, if none of these can be found after making reasonable inquiry, then to the addressee's last-known residence or place of business. Notice shall be deemed to have been received on the day it is so delivered.
- 3.2 For the purposes of calculating a period of time under the Rules, such period shall begin to run on the day following the day when a notice, notification, proposal or other communication is 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.
- 3.3 Unless the parties agree otherwise in writing any reference to time shall be deemed to be a reference to the time at the seat of the arbitration.
- 3.4 Any period of time imposed by these Rules or ACICA in respect of the Notice of Arbitration, the Answer to Notice of Arbitration and the composition of the Arbitral Tribunal may be extended by ACICA.
- 4 Notice of Arbitration

- 4.1 The party initiating recourse to arbitration (hereinafter called the "Claimant") shall give to ACICA a Notice of Arbitration in two copies or such additional number as ACICA directs. The Claimant shall at the same time pay ACICA's registration fee as specified in Appendix A.
- 4.2 Subject to Article 4.5, the arbitral proceedings shall be deemed to commence on the date on which the Notice of Arbitration or the registration fee is received by ACICA, whichever is the later.
- 4.3 The Notice of Arbitration shall include the following:
- (a) a demand that the dispute be referred to arbitration;
  - (b) the names, postal addresses, telephone and facsimile numbers and email addresses (if any) of the parties and their counsel;
  - (c) a copy of the arbitration clause or the separate arbitration agreement that is invoked;
  - (d) a reference to the contract out of, relating to or in connection with which the dispute arises;
  - (e) the general nature of the claim and an indication of the amount involved, if any;
  - (f) the relief or remedy sought; and
  - (g) a proposal as to the number of arbitrators (i.e. one or three), if the parties have not previously agreed thereon.
- 4.4 The Notice of Arbitration may also include:
- (a) the Claimant's proposal for the appointment of a sole arbitrator in accordance with Article 9.1;
  - (b) the notification of the appointment of an arbitrator referred to in Article 10.1; and
  - (c) the Statement of Claim referred to in Article 21.

- 4.5 If the Notice of Arbitration is incomplete or is not submitted in the required number ACICA may request the Claimant to remedy the defect within an appropriate period of time and may delay the date of commencement of the arbitral proceedings until such defect is remedied.
- 4.6 Subject to Article 4.5, upon receipt of the Notice of Arbitration ACICA shall communicate the Notice of Arbitration to the other party referred to in Article 4.3(b).
- 5 Answer to Notice of Arbitration
- 5.1 Within 30 days after receipt of the Notice of Arbitration from ACICA each party against whom the Claimant seeks relief ("Respondent" or "Respondents") shall submit an Answer to Notice of Arbitration to ACICA. It shall be submitted in two copies or such additional number as ACICA directs.
- 5.2 The Answer to Notice of Arbitration shall include the following:
- (a) the names, postal addresses, telephone and facsimile numbers and email addresses (if any) of the Respondent and its counsel;
  - (b) any plea that an Arbitral Tribunal constituted under these Rules does not have jurisdiction;
  - (c) the Respondent's comments on the particulars set forth in the Notice of Arbitration;
  - (d) the Respondent's answer to the relief or remedy sought in the Notice of Arbitration; and
  - (e) the Respondent's proposal as to the number of arbitrators if the parties have not previously agreed thereon.
- 5.3 The Answer to Notice of Arbitration may also include:
- (a) the Respondent's proposal for the appointment of a sole arbitrator in accordance with Article 9.1;

- (b) the notification of the appointment of an arbitrator referred to in Article 10.1;
  - (c) the Statement of Defence referred to in Article 22; and
  - (d) any counterclaim or claim for the purpose of a set-off, arising out of, relating to or in connection with the contract. (The provisions of Article 4.3 will apply to any such counterclaim or set-off.)
- 5.4 ACICA shall provide a copy of the Answer to Notice of Arbitration and of any exhibits included therewith to the Claimant.
- 5.5 Once the registration fee has been paid and all arbitrators have been confirmed, ACICA shall transmit the file to the Arbitral Tribunal.

## 6 Representation and Assistance

The parties may be represented or assisted by persons of their choice. The names and addresses of such persons must be communicated in writing to the other party and ACICA.

## 7 ACICA Facilities and Assistance

ACICA 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 and interpretation facilities.

## SECTION II: COMPOSITION OF THE ARBITRAL TRIBUNAL

### 8 Number of Arbitrators

If the parties have not previously agreed on the number of arbitrators (i.e. one or three), and if within 15 days after the receipt by the Respondent of the Notice of Arbitration the



parties cannot agree, ACICA shall determine the number of arbitrators taking into account all relevant circumstances.

## 9 Appointment of a Sole Arbitrator

9.1 If a sole arbitrator is to be appointed, either party may propose to the other the names of one or more persons, one of whom would serve as the sole arbitrator.

9.2 If within 30 days after receipt by a party of a proposal made in accordance with Article 9.1 the parties have not reached agreement on the choice of a sole arbitrator and provided written evidence of their agreement to ACICA, the sole arbitrator shall be appointed by ACICA.

9.3 In making the appointment, ACICA shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account as well the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.

## 10 Appointment of Three Arbitrators

10.1 If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the Chairperson of the Tribunal.

10.2 If within 30 days after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator it has appointed, the first party may request ACICA to appoint the second arbitrator. In making the appointment, ACICA shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator.

10.3 If within 30 days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the Chairperson, the Chairperson shall be appointed by ACICA.

- 11 Appointment of Arbitrators in Multi-Party Disputes
- 11.1 For the purposes of Articles 9 and 10, the acts of multiple parties, whether as multiple Claimants or multiple Respondents, shall have no effect, unless the multiple Claimants or multiple Respondents have acted jointly and provided written evidence of their agreement to ACICA.
- 11.2 If three arbitrators are to be appointed and the multiple Claimants or multiple Respondents do not act jointly in appointing an arbitrator, ACICA shall appoint each member of the Arbitral Tribunal and shall designate one of them to act as Chairperson, unless all parties agree in writing on a different method for the constitution of the Arbitral Tribunal and provide written evidence of their agreement to ACICA.
- 12 Information about Arbitrators
- 12.1 Where the names of one or more persons are proposed for appointment as arbitrators, their names, postal addresses, telephone and facsimile numbers and email addresses (if any) shall be provided and their nationalities shall be indicated, together with a description of their qualifications.
- 12.2 When ACICA is requested to appoint an arbitrator pursuant to Articles 9 to 11, ACICA may require from either party such information as it deems necessary to fulfill its function.
- 13 Challenge of Arbitrators
- 13.1 A prospective arbitrator shall in writing disclose to those who approach him or her in connection with his or her possible appointment any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, once appointed or chosen, shall immediately in writing disclose such circumstances to the parties unless he or she has already informed them in writing of these circumstances. A copy of any written disclosures provided to a party by a prospective arbitrator or arbitrator shall be sent to ACICA.

- 13.2 Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.
- 13.3 A party may challenge the arbitrator appointed by it only for reasons of which it becomes aware after the appointment has been made.
- 14 Procedure for the Challenge of Arbitrators
- 14.1 A party who intends to challenge an arbitrator shall send notice of its challenge within 15 days after being notified of the appointment of that arbitrator or within 15 days after becoming aware of the circumstances mentioned in Article 13.
- 14.2 The challenge shall be notified to the other party, to the arbitrator who is challenged, to the other members of the Arbitral Tribunal and to ACICA. The notification shall be in writing and shall state the reasons for the challenge.
- 14.3 When an arbitrator has been challenged by one party, the other party may agree to the challenge. The arbitrator may also, after the challenge, resign. In neither case does this imply acceptance of the validity of the grounds for the challenge. In both cases the procedure provided in Articles 9 to 13 shall be used for the appointment of a substitute arbitrator, even if during the process of appointing the challenged arbitrator a party had failed to exercise its right to appoint or to participate in the appointment.
- 14.4 If the other party does not agree to the challenge and the challenged arbitrator does not resign, the decision on the challenge shall be made by ACICA.
- 14.5 If ACICA sustains the challenge, a substitute arbitrator shall be appointed or chosen pursuant to the procedure applicable to the appointment or choice of an arbitrator as provided in Articles 9 to 13.
- 15 Replacement of an Arbitrator

- 15.1 In the event of the death or resignation of an arbitrator during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in Articles 9 to 13 that was applicable to the appointment or choice of the arbitrator being replaced.
- 15.2 In the event that an arbitrator fails to act or in the event of the de jure or de facto impossibility of him or her performing his or her functions, the procedure in respect of the challenge and replacement of an arbitrator as provided in the preceding Articles shall apply.
- 16 Repetition of Hearings if Arbitrator Replaced
- Once reconstituted, and after having invited the parties to comment, the Arbitral Tribunal shall determine if and to what extent prior proceedings shall be repeated before the reconstituted Arbitral Tribunal.

### SECTION III: ARBITRAL PROCEEDINGS

- 17 General Provisions
- 17.1 Subject to these Rules, the Arbitral Tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated equally and that each party is given a full opportunity of presenting its case.
- 17.2 If either party so requests, the Arbitral Tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the Arbitral Tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.
- 17.3 Questions of procedure may be decided by the Chairperson alone, or if the Arbitral Tribunal so authorises, any other member of the Arbitral Tribunal. Any such decision is subject to revision, if any, by the Arbitral Tribunal as a whole.

- 17.4 All documents or information supplied to the Arbitral Tribunal by one party shall at the same time be communicated by that party to the other party.
- 18 Confidentiality
- 18.1 Unless the parties agree otherwise in writing, all hearings shall take place in private.
- 18.2 The parties, the Arbitral Tribunal and ACICA shall treat as confidential and shall not disclose to a third party without prior written consent from the parties all matters relating to the arbitration (including the existence of the arbitration), the award, materials created for the purpose of the arbitration and documents produced by another party in the proceedings and not in the public domain except:
- (a) for the purpose of making an application to any competent court;
  - (b) for the purpose of making an application to the courts of any State to enforce the award;
  - (c) pursuant to the order of a court of competent jurisdiction;
  - (d) if required by the law of any State which is binding on the party making the disclosure; or
  - (e) if required to do so by any regulatory body.
- 18.3 Any party planning to make disclosure under Article 18.2 must within a reasonable time prior to the intended disclosure notify the Arbitral Tribunal, ACICA and the other parties (if during the arbitration) or ACICA and the other parties (if the disclosure takes place after the conclusion of the arbitration) and furnish details of the disclosure and an explanation of the reason for it.
- 18.4 To the extent that a witness is given access to evidence or other information obtained in the arbitration, the party calling such witness is responsible for the maintenance by

the witness of the same degree of confidentiality as that required of the party.

## 19 Seat of Arbitration

19.1 If the parties have not previously agreed on the seat of the arbitration and if within 15 days after the commencement of the arbitration they cannot agree, the seat of the arbitration shall be Sydney, Australia.

19.2 The Arbitral Tribunal may decide where the proceedings shall be conducted (at the seat or other venues). In particular, it may hear witnesses and hold meetings for consultation among its members at any venue it deems appropriate, having regard to the circumstances of the arbitration.

19.3 The Arbitral Tribunal may meet at any venue it deems appropriate for the inspection of goods, other property or documents. The parties shall be given sufficient notice to enable them to be present at such inspection.

19.4 The award shall be made at the seat of the arbitration.

## 20 Language

20.1 Subject to an agreement by the parties, the Arbitral Tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings. This determination shall apply to the Statement of Claim, the Statement of Defence, any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.

20.2 The Arbitral Tribunal may order that any submissions (written or oral), documents annexed to the Statement of Claim or Statement of Defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation (or be translated) into the language or languages agreed upon by the parties or determined by the Arbitral Tribunal.

## 21 Statement of Claim

21.1 Unless the Statement of Claim was contained in the Notice of Arbitration, within a period of time to be determined by the Arbitral Tribunal, the Claimant shall communicate its Statement of Claim in writing to the Respondent, each of the arbitrators and ACICA. A copy of the contract, and of the arbitration agreement if not contained in the contract, shall be annexed thereto.

21.2 The Statement of Claim shall include the following particulars:

- (a) the names, postal addresses, telephone and facsimile numbers and email addresses (if any) of the parties and their counsel;
- (b) a statement of the facts supporting the claim;
- (c) the points at issue; and
- (d) the relief or remedy sought.

21.3 The Claimant may annex to its Statement of Claim all documents it deems relevant or may add a reference to the documents or other evidence it will submit.

## 22 Statement of Defence

22.1 Unless the Statement of Defence was contained in the Answer to Notice of Arbitration, within a period of time to be determined by the Arbitral Tribunal, the Respondent shall communicate its Statement of Defence in writing to the Claimant, each of the arbitrators and ACICA.

22.2 The Statement of Defence shall reply to the particulars (b), (c) and (d) of the Statement of Claim (Article 21.2). The Respondent may annex to its Statement of Defence the documents on which it relies for its defence or may add a reference to the documents or other evidence it will submit.

22.3 Unless put forward in the Answer to Notice of Arbitration, the Respondent may in its Statement of Defence, or at a later stage in the arbitral proceedings if the Arbitral Tribunal decides that the delay was justified under the circumstances, make a counterclaim or claim for the purpose of a set-off, arising out of, relating to or in connection with the contract.

22.4 The provisions of Article 21.2 (b) to (d) shall apply to a counterclaim and a claim relied on for the purpose of a set-off.

### 23 Amendments to the Claim or Defence

During the course of the arbitral proceedings either party may amend or supplement its claim or defence unless the Arbitral Tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances it considers relevant. However, a claim may not be amended in such a manner that the amended claim falls outside the scope of the arbitration clause or separate arbitration agreement.

### 24 Jurisdiction of the Arbitral Tribunal

24.1 The Arbitral Tribunal shall have the power to rule on objections that it has no jurisdiction, including any objections with respect to the existence or validity of the arbitration clause or of the separate arbitration agreement.

24.2 The Arbitral Tribunal shall have the power to determine the existence or the validity of the contract of which an arbitration clause forms a part. For the purposes of this Article 24, an arbitration clause which forms part of a contract and which provides for arbitration under these Rules 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 ipso jure the invalidity of the arbitration clause.

24.3 A plea that the Arbitral Tribunal does not have jurisdiction shall be raised no later than in the Statement of Defence



referred to in Article 22, or, with respect to a counterclaim, in the reply to the counterclaim.

- 24.4 In general, the Arbitral Tribunal should rule on a plea concerning its jurisdiction as a preliminary question. However, the Arbitral Tribunal may proceed with the arbitration and rule on such a plea in its final award.

## 25 Further Written Statements

The Arbitral Tribunal shall decide which further written statements, in addition to the Statement of Claim and the Statement of Defence, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.

## 26 Periods of Time

The periods of time fixed by the Arbitral Tribunal for the communication of written statements (including the Statement of Claim and Statement of Defence) should not exceed 45 days. However, the Arbitral Tribunal may extend the periods of time if it concludes that an extension is justified.

## 27 Evidence and Hearings

- 27.1 Each party shall have the burden of proving the facts relied upon to support its claim or defence.
- 27.2 The Arbitral Tribunal shall have regard to, but is not bound to apply, the *International Bar Association Rules on the Taking of Evidence in International Commercial Arbitration* in the version current at the commencement of the arbitration.
- 27.3 An agreement of the parties and the Rules (in that order) shall at all times prevail over an inconsistent provision in the *International Bar Association Rules on the Taking of Evidence in International Commercial Arbitration*.

## 28 Interim Measures of Protection

- 28.1 Unless the parties agree otherwise in writing, the Arbitral Tribunal may, on the request of any party, order interim measures of protection. The Arbitral Tribunal may order such measures in the form of an award, or in any other form (such as an order) provided reasons are given, and on such terms as it deems appropriate. The Arbitral Tribunal shall endeavour to ensure that the measures are enforceable.
- 28.2 An interim measure of protection is any temporary measure by which the Arbitral Tribunal orders a party to:
- (a) maintain or restore the status quo pending determination of the dispute;
  - (b) take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm;
  - (c) provide a means of preserving assets out of which a subsequent award may be satisfied;
  - (d) preserve evidence that may be relevant and material to the resolution of the dispute; or
  - (e) provide security for legal or other costs of any party.
- 28.3 Before the Arbitral Tribunal orders any interim measure, the party requesting it shall satisfy the Arbitral Tribunal that:
- (a) irreparable harm is likely to result if the measure is not ordered;
  - (b) such harm substantially outweighs the harm that is likely to result to the party affected by the measure if the measure is granted; and
  - (c) there is a reasonable possibility that the requesting party will succeed on the merits, provided that any determination on this possibility shall not affect the liberty of decision of the Arbitral Tribunal in making any subsequent determination.

- 28.4 The Arbitral Tribunal may require a party to provide appropriate security as a condition to granting an interim measure.
- 28.5 The requesting party shall promptly disclose in writing to the Arbitral Tribunal any material change in the circumstances on the basis of which that party made the request for, or the Arbitral Tribunal granted, the interim measure.
- 28.6 The Arbitral Tribunal may modify, suspend or terminate any of its own interim measures at any time upon the request of any party. In exceptional circumstances the Arbitral Tribunal may, on its own initiative, modify, suspend or terminate any of its own interim measures upon prior notice to the parties.
- 28.7 If the Arbitral Tribunal later determines that the measure should not have been granted, it may decide that the requesting party is liable to the party against whom the measure was directed for any costs or damages caused by the measure.
- 28.8 The power of the Arbitral Tribunal under this Article 28 shall not prejudice a party's right to apply to any competent court or other judicial authority for interim measures. Any application and any order for such measures after the formation of the Arbitral Tribunal shall be promptly communicated, in writing, by the applicant to the Arbitral Tribunal, all other parties and ACICA.
- 29 Default
- 29.1 If, within the period of time fixed by the Arbitral Tribunal, the Claimant has failed to communicate its Statement of Claim without showing sufficient cause for such failure, the Arbitral Tribunal shall issue an order for the termination of the arbitral proceedings. If, within the period of time fixed by the Arbitral Tribunal, the Respondent has failed to communicate its Statement of Defence without showing sufficient cause for such failure, the Arbitral Tribunal shall order that the proceedings continue.

29.2 If one of the parties, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the Arbitral Tribunal may proceed with the arbitration.

29.3 If one of the parties, duly invited to produce documentary evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the Arbitral Tribunal may make the award on the evidence before it.

### 30 Closure of Hearings

30.1 The Arbitral Tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.

30.2 The Arbitral Tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own motion or upon application of a party, to reopen the hearings at any time before the award is made.

### 31 Waiver of Rules

A party that knows that any provision of, or requirement under, these Rules has not been complied with and yet proceeds with the arbitration without promptly stating its objection to such non-compliance, shall be deemed to have waived its right to object.

## SECTION IV: THE AWARD

### 32 Decisions

When there are three arbitrators, any award or other decision of the Arbitral Tribunal shall be made by a majority of the arbitrators. Failing a majority decision on any issue, the opinion of the Chairperson shall prevail.

### 33 Form and Effect of the Award

- 33.1 In addition to making a final award, the Arbitral Tribunal shall be entitled to make interim, interlocutory, or partial awards.
- 33.2 The award shall be made in writing and shall be final and binding on the parties. The parties undertake to carry out the award without delay.
- 33.3 The Arbitral Tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.
- 33.4 An award shall be signed by the arbitrators and it shall contain the date on which and the place where the award was made. If any arbitrator refuses or fails to sign the award, the signatures of the majority or (failing a majority) of the Chairperson shall be sufficient, provided that the reason for the omitted signature is stated in the award by the majority or Chairperson.
- 33.5 The Arbitral Tribunal shall communicate copies of the award signed by the arbitrators to the parties and ACICA.
- 33.6 Before communicating the award to the parties, the Arbitral Tribunal shall inquire of ACICA whether there are any outstanding monies due to it. The award shall not be communicated to the parties until ACICA certifies that there are no monies due to it.
- 33.7 If the arbitration law of the place where the award is made requires that the award be filed or registered by the Arbitral Tribunal, the Tribunal shall comply with this requirement within the period of time required by law.
- 34 Applicable Law, Amiable Compositeur
- 34.1 The Arbitral Tribunal shall apply the law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the Arbitral Tribunal shall apply the rules of law which it considers applicable.

- 34.2 The Arbitral Tribunal shall decide as amiable compositeur or ex aequo et bono only if the parties have, in writing, expressly authorized the Arbitral Tribunal to do so and if the law applicable to the arbitral procedure permits such arbitration.
- 34.3 In all cases, the Arbitral Tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.
- 35 Settlement or Other Grounds for Termination
- 35.1 If, before the award is made, the parties agree on a settlement of the dispute, the Arbitral Tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by both parties and accepted by the Tribunal, record the settlement in the form of an arbitral award on agreed terms. The Arbitral Tribunal is not obliged to give reasons for such an award.
- 35.2 If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in Article 35.1, the Arbitral Tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The Arbitral Tribunal shall have the power to issue such an order unless a party raises justifiable grounds for objection.
- 35.3 Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the Arbitral Tribunal to the parties and ACICA. Where an arbitral award on agreed terms is made, the provisions of Articles 33.2, and 33.4 to 33.7, shall apply.
- 36 Interpretation of the Award
- 36.1 Within 30 days after the receipt of the award, either party, with notice to the other party, may request that the Arbitral Tribunal give an interpretation of the award.

36.2 The interpretation shall be given in writing within 45 days after the receipt of the request. The interpretation shall form part of the award and the provisions of Articles 33.2 to 33.7, shall apply.

37 Correction of the Award

37.1 Within 30 days after the receipt of the award, either party, with notice to the other party, may request the Arbitral Tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The Arbitral Tribunal may within 30 days after the communication of the award make such corrections on its own initiative.

37.2 Such corrections shall be in writing, and the provisions of Articles 33.2 to 33.7 shall apply.

38 Additional Award

38.1 Within 30 days after the receipt of the award, either party, with notice to the other party, may request the Arbitral Tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.

38.2 If the Arbitral Tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall complete its award within 60 days after the receipt of the request.

38.3 When an additional award is made, the provisions of Articles 33.2 to 33.7, shall apply.

39 Costs

The Arbitral Tribunal shall fix the costs of arbitration in its award. The term "costs of arbitration" includes only:

- (a) the fees of the Arbitral Tribunal, to be stated separately as to each arbitrator, and to be fixed in accordance with Article 40;
- (b) the travel (business class airfares) and other reasonable expenses incurred by the arbitrators;
- (c) the costs of expert advice and of other assistance required by the Arbitral Tribunal;
- (d) the travel (business class airfares) and other reasonable expenses of witnesses to the extent such expenses are approved by the Arbitral Tribunal;
- (e) the legal and other costs directly incurred by the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the Arbitral Tribunal determines that the amount of such costs is reasonable;
- (f) ACICA's registration fee and administration fee; and
- (g) fees for facilities and assistance provided by ACICA in accordance with Articles 7 and 42.5.

#### 40 Fees of the Arbitral Tribunal

- 40.1 Unless otherwise agreed, the arbitrators shall be remunerated on the basis of an hourly rate.
- 40.2 The hourly rate shall be agreed between the parties and the arbitrators or, failing agreement, shall be determined by ACICA.
- 40.3 Unless otherwise agreed in writing, the hourly rate will be exclusive of GST, value added tax or any other like tax which may apply.
- 40.4 Where ACICA is requested to determine the hourly rate, it shall take into account, inter alia:



- (a) the nature of the dispute and the amount in dispute, insofar as it is aware of them; and
- (b) the standing and experience of the arbitrator.

#### 41 Apportionment of Costs

41.1 Except as provided in Article 41.2, the costs of arbitration shall in principle be borne by the unsuccessful party. However, the Arbitral Tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

41.2 With respect to the costs referred to in Article 39(e), the Arbitral Tribunal, taking into account the circumstances of the case, shall be free to determine which party shall bear such costs or may apportion such costs between the parties if it determines that apportionment is reasonable.

41.3 When the Arbitral Tribunal issues an order for the termination of the arbitral proceedings or makes an award on agreed terms, it shall fix the costs of arbitration referred to in Article 39 in that order or award.

41.4 No additional fees may be charged by an Arbitral Tribunal for interpretation or correction or completion of its award under Articles 36 to 38.

#### 42 Deposit of Costs

42.1 The Arbitral Tribunal, on its establishment, shall request each party to deposit an equal amount as an advance for the costs referred to in Article 39.1(a), (b), (c), (f) and (g).

42.2 Where a Respondent submits a counterclaim, or it otherwise appears appropriate in the circumstances, the Arbitral Tribunal may in its discretion establish separate deposits.

- 42.3 During the course of the arbitral proceedings the Arbitral Tribunal may from time to time request supplementary deposits from the parties.
- 42.4 The Arbitral Tribunal shall fix the amount of any deposit or supplementary deposits only after consultation and with the approval of ACICA.
- 42.5 With the consent of ACICA, the Arbitral Tribunal may lodge the deposits in a trust account maintained by ACICA. ACICA shall disburse those funds on the instructions of the Arbitral Tribunal. ACICA may make a charge for its trust account services.
- 42.6 If the required deposits are not paid in full within 30 days after the receipt of the request, the Arbitral Tribunal 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 may order the suspension or termination of the arbitral proceedings.
- 42.7 After the award has been made, the Arbitral Tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

#### SECTION V: GENERAL

- 43 Decisions Made by ACICA
- 43.1 Decisions made by ACICA will be made by the ACICA Board of Directors, or by any person(s) to whom the Board of Directors has delegated decision making authority.
- 43.2 Decisions made by ACICA with respect to all matters relating to the arbitration shall be conclusive and binding upon the parties and the Arbitral Tribunal. ACICA shall not be required to give any reasons.
- 43.3 To the extent permitted by the law of the seat of the arbitration, the parties shall be taken to have waived any right of appeal or review in respect of any such decisions made by ACICA to any State court or other judicial authority.

43.4 Neither ACICA nor its members, officers, servants or agents shall be liable for making any decision or taking any action or failing to make any decision or take any action under these Rules.

#### 44 Liability of Arbitral Tribunal

The Arbitral Tribunal shall not be liable for any act or omission in connection with any arbitration conducted by reference to these Rules save where the act or omission is fraudulent.

### APPENDIX A: ACICA's Fees

#### 1 Registration Fee

1.1 The reference in these Rules to "dollars" or "\$" is to Australian currency.

1.2 When submitting the Notice of Arbitration the Claimant shall pay to ACICA a registration fee of \$2,500. The registration fee is not refundable.

#### 2 Administration Fee

2.1 The parties shall pay to ACICA an administrative fee as specified in Schedule 1.

2.2 For the purposes of determining the amount in dispute:

(a) claims, counterclaims and set-off defences shall be added together;

(b) amounts claimed for interest shall not be taken into account, unless the interest claim exceeds the principal amount claimed, in which case the interest claims alone shall be considered in calculating the amount in dispute;

(c) claims expressed in currencies other than in Australian dollars shall be converted into Australian dollars at the rate of exchange applicable on the day when ACICA received the Notice of Arbitration; and

- (d) if the amount in dispute is not specified in the Statement of Claim or counterclaim, the amount in dispute shall be determined by the Arbitral Tribunal taking into account all relevant circumstances.

#### Schedule 1

<u>Amount in Dispute</u>	<u>Administrative Fees</u>
\$1 to \$500,000	1% of the amount in dispute
\$500,001 to \$1,000,000	\$5,000 plus 0.5% of the amount in dispute above \$500,000
\$1,000,001 to \$10,000,000	\$7,500 plus 0.25% of the amount in dispute above \$1,000,000
\$10,000,001 to \$100,000,000	\$30,000 plus 0.01% of the amount in dispute above \$10,000,000
over \$100,000,000	\$39,000 plus 0.02% of the amount in dispute above \$100,000,000 up to a maximum of \$60,000

#### APPENDIX B: ACICA's Contact Details

##### 1 **Sydney Office**

Level 6, 50 Park Street  
 Sydney NSW 2000  
 Telephone: +61 (0) 2 9286 3591  
 Facsimile: +61 (0) 2 9267 3125  
 Email: secretariat@acica.org.au

##### 2 **Melbourne Office**

470 Bourke Street  
 Melbourne VIC 3000  
 Telephone: +61 (0) 3 9286 6384  
 Facsimile: +61 (0) 3 9286 6460  
 Email: secretariat@acica.org.au

These details are correct as at 1 August 2005. Please check the ACICA website for any changes - [www.acica.org.au](http://www.acica.org.au)

***B. Expedited Rules of the ACICA***

MODEL ARBITRATION CLAUSE

Any dispute, controversy or claim arising out of, relating to or in connection with this contract, including any question regarding its existence, validity or termination, shall be resolved by arbitration in accordance with the ACICA Expedited Arbitration Rules. The seat of arbitration shall be Sydney, Australia [or choose another city]. The language of the arbitration shall be English [or choose another language].

SECTION I: INTRODUCTORY RULES

1 ACICA Expedited Arbitration Rules

These rules ("Rules") are the expedited rules of arbitration of the Australian Centre for International Commercial Arbitration ("ACICA") and may be referred to as the "ACICA Expedited Arbitration Rules".

2 Scope of Application

2.1 Where parties agree in writing that disputes shall be referred to arbitration under the ACICA Expedited Arbitration Rules then such disputes shall be resolved in accordance with these Rules as in effect on the date of commencement of the arbitration, subject to such modification as the parties may agree in writing.

2.2 These Rules shall govern the arbitration except that where any of these Rules are in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

- 2.3 By selecting these Rules the parties do not intend to exclude the operation of the UNCITRAL Model Law on International Commercial Arbitration.
- 3 Overriding Objective
- 3.1 The overriding objective of these Rules, which is to inform the processes, powers and rights here described, is to provide arbitration that is quick, cost effective and fair, considering especially the amounts in dispute and complexity of issues or facts involved.
- 3.2 By invoking these Rules the parties agree to accept the overriding objective and its application by the Arbitrator.
- 4 Notice, Calculation of Periods of Time
- 4.1 For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received if it is physically delivered to the addressee or to the addressee's residence, place of business or mailing address, or, if none of these can be found after making reasonable inquiry, then to the addressee's last-known residence or place of business. Notice shall be deemed to have been received on the day it is so delivered.
- 4.2 For the purposes of calculating a period of time under the Rules, such period shall begin to run on the day following the day when a notice, notification, proposal or other communication is 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.
- 4.3 Unless the parties agree otherwise in writing any reference to time shall be deemed to be a reference to the time at the seat of the arbitration.
- 5 Commencement of Arbitration

- 5.1 The party initiating recourse to arbitration (hereinafter called the "Claimant") shall give to ACICA a Notice of Arbitration in two copies or such additional number as ACICA directs. The Claimant shall at the same time pay ACICA's registration fee as specified in Appendix A.
- 5.2 Subject to Article 5.4, the arbitral proceedings shall be deemed to commence on the date on which the Notice of Arbitration or the registration fee is received by ACICA, whichever is the later.
- 5.3 The Notice of Arbitration shall include the following:
- (a) a demand that the dispute be referred to arbitration;
  - (b) the names, postal addresses, telephone and facsimile numbers and email addresses (if any) of the parties and their representatives (if any);
  - (c) a copy of the arbitration clause or the separate arbitration agreement that is invoked;
  - (d) a reference to the contract out of, relating to or in connection with which the dispute arises;
  - (e) the general nature of the claim and an indication of the amount involved, if any;
  - (f) the relief or remedy sought; and
  - (g) the Statement of Claim referred to in Article 17, which may be attached as a separate document.
- 5.4 If the Notice of Arbitration is incomplete or is not submitted in the required number ACICA may request the Claimant to remedy the defect within an appropriate period of time and may delay the date of commencement of the arbitral proceedings until such defect is remedied, in which event the arbitration is deemed to have commenced on the date ACICA gives to the parties advice that the defect has been remedied.

5.5 Subject to Article 5.4, upon receipt of the Notice of Arbitration ACICA shall communicate the Notice of Arbitration to the other party referred to in Article 5.3(b), and that party shall file a Statement of Defence under Article 18.

## 6 Representation and Assistance

The parties may be represented or assisted by persons of their choice. The names and addresses of such persons must be communicated in writing to the other party and ACICA.

## 7 ACICA Facilities and Assistance

ACICA shall, at the request of the Arbitrator 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 Arbitrator, secretarial assistance and interpretation facilities.

## SECTION II: COMPOSITION OF THE ARBITRAL TRIBUNAL

### 8 Appointment of the Arbitrator

8.1 There shall be one arbitrator.

8.2 Within 14 days from the commencement of the arbitration, the Arbitrator shall be appointed by ACICA.

8.3 A prospective arbitrator shall in writing disclose to ACICA any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, once appointed or chosen, shall immediately in writing disclose such circumstances to the parties. A copy of any written disclosures provided to ACICA by a prospective arbitrator may be sent to the parties.

8.4 In making the appointment, ACICA shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into



account as well the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.

- 8.5 When making the appointment, ACICA may require from either party such information as it deems necessary to fulfil its function.
- 8.6 For the purposes of Articles 8.3 to 8.5, 9 and 10.4, the Arbitrator, the parties, and ACICA may have regard to the International Bar Association's Guidelines on Conflicts of Interest in International Arbitration, in the version current at the commencement of the arbitration.
- 8.7 Once the Arbitrator has been appointed, ACICA shall transmit the file to him or her.

## 9 Challenge of Arbitrators

The Arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to his or her impartiality or independence.

## 10 Procedure for the Challenge of Arbitrators

- 10.1 A party who intends to challenge the Arbitrator shall send notice of its challenge within 7 days after being notified of his or her appointment or within 7 days after becoming aware of the circumstances mentioned in Article 9.
- 10.2 The challenge shall be notified to the other party, to the Arbitrator and to ACICA. The notification shall be in writing and shall state the reasons for the challenge.
- 10.3 When the Arbitrator has been challenged by one party, the other party may agree to the challenge. The Arbitrator may also, after the challenge, resign. In neither case does this imply acceptance of the validity of the grounds for the challenge. In both cases the procedure provided in Article 8 shall be used for the appointment of a substitute Arbitrator.

- 10.4 If the other party does not agree to the challenge and the challenged Arbitrator does not resign, the decision on the challenge shall be made by ACICA.
- 10.5 If ACICA sustains the challenge, a substitute Arbitrator shall be appointed or chosen pursuant to the procedure set out in Article 8.
- 10.6 Challenge to the Arbitrator shall not affect the conduct of the arbitration in any way unless the Arbitrator resigns or is removed. However if an Arbitrator resigns or is removed, all time limits under these Rules will be extended by the time that elapses between the Arbitrator's resignation or removal and the appointment of a substitute Arbitrator.
- 11 Replacement of an Arbitrator
- 11.1 In the event of the death or resignation of the Arbitrator during the course of the arbitral proceedings, a substitute Arbitrator shall be appointed or chosen pursuant to the procedure provided for in Article 8.
- 11.2 In the event that the Arbitrator fails to act or in the event of the de jure or de facto impossibility of him or her performing his or her functions, the procedure in respect of the challenge and replacement of the Arbitrator as provided in the preceding Articles shall apply.
- 12 Repetition of Proceedings if Arbitrator Replaced
- Once the substitute Arbitrator has been appointed, and after having invited the parties to comment, the Arbitrator shall determine if and to what extent prior proceedings shall be repeated.

### SECTION III: ARBITRAL PROCEEDINGS

- 13 General Provisions
- 13.1 Subject to these Rules, including the overriding objective in Article 3, the Arbitrator may conduct the arbitration in such

manner as he or she considers appropriate, provided that the parties are treated equally and that each party is given a reasonable opportunity of presenting its case.

- 13.2 There shall be no hearing unless:
- (a) exceptional circumstances exist, as determined by the Arbitrator; and
  - (b) either the Arbitrator or the parties require a hearing to take place.
- 13.3 Any hearing shall be no longer than one working day, unless the arbitrator decides otherwise. The arbitrator shall allocate the available time to the parties in such manner that each party shall have an equal opportunity to present its case.
- 13.4 All documents or information supplied to the Arbitrator by one party shall at the same time be communicated by that party to the other party.
- 14 Confidentiality
- 14.1 Unless the parties agree otherwise in writing, any hearings shall take place in private.
- 14.2 The parties, the Arbitrator and ACICA shall treat as confidential and shall not disclose to a third party without prior written consent from the parties any matters relating to the arbitration (including the existence of the arbitration), the award, materials created for the purpose of the arbitration and documents produced by another party in the proceedings and not in the public domain except:
- (a) for the purpose of making an application to any competent court;
  - (b) for the purpose of making an application to the courts of any State to enforce the award;
  - (c) pursuant to the order of a court of competent jurisdiction;

- (d) if required by the law of any State which is binding on the party making the disclosure; or
  - (e) if required to do so by any regulatory body.
- 14.3 Any party planning to make disclosure under Article 14.2 must within a reasonable time prior to the intended disclosure notify the Arbitrator, ACICA and the other party (if during the arbitration) or ACICA and the other party (if the disclosure takes place after the conclusion of the arbitration) and furnish details of the disclosure and an explanation of the reason for it.
- 14.4 To the extent that a witness is given access to evidence or other information obtained in the arbitration, the party calling such witness is responsible for the maintenance by the witness of the same degree of confidentiality as that required of the party.
- 15 Seat of Arbitration
  - 15.1 If the parties have not previously agreed on the seat of the arbitration, the seat of the arbitration shall be Sydney, Australia.
  - 15.2 The Arbitrator may decide where the proceedings shall be conducted (at the seat or other venues). In particular, the Arbitrator may hear witnesses and hold meetings at any venue he or she deems appropriate, having regard to the circumstances of the arbitration.
  - 15.3 The Arbitrator may conduct any part of the proceedings at any venue he or she deems appropriate for the inspection of goods, other property or documents. The parties shall be given sufficient notice to enable them to be present at such inspection.
  - 15.4 The award shall be made at the seat of the arbitration.
- 16 Language

- 16.1 Subject to an agreement by the parties, the Arbitrator shall, promptly after his or her appointment, determine the language or languages to be used in the proceedings. This determination shall apply to the Statement of Claim, the Statement of Defence, any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.
- 16.2 The Arbitrator may order that any submissions (written or oral), documents annexed to the Statement of Claim or Statement of Defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation (or be translated) into the language or languages agreed upon by the parties or determined by the Arbitrator.
- 17 Statement of Claim
- 17.1 The Statement of Claim shall be contained in the Notice of Arbitration. A copy of the contract, and of the arbitration agreement if not contained in the contract, shall be annexed thereto.
- 17.2 The Statement of Claim shall include the following particulars:
- (a) the names, postal addresses, telephone and facsimile numbers and email addresses (if any) of the parties and their counsel (if any);
  - (b) a statement of the facts supporting the claim;
  - (c) the points at issue; and
  - (d) the relief or remedy sought.
- 17.3 The Claimant shall annex to its Statement of Claim all documents and any witness statements on which it relies.
- 18 Statement of Defence

- 18.1 Within 28 days of ACICA communicating the Notice of Arbitration under Article 5.5, the Respondent shall communicate its Statement of Defence in writing to the Claimant, the Arbitrator and ACICA.
- 18.2 The Statement of Defence shall reply to the particulars (b), (c) and (d) of the Statement of Claim (Article 17.2) and provide particulars similar to those required under Article 17.2(a). The Respondent shall annex to its Statement of Defence the documents and any witness statements on which it relies for its defence.
- 18.3 The Respondent may in its Statement of Defence make a counterclaim or claim for the purpose of a set-off, arising out of, relating to or in connection with the dispute.
- 18.4 The provisions of Article 17.2 (b) to (d) and 17.3 shall apply to a counterclaim and a claim relied on for the purpose of a set-off.
- 18.5 The Claimant shall communicate a Defence to the Counterclaim (if any) within 14 days, including any additional documents.

## 19 Amendments to the Claim or Defence

During the course of the arbitral proceedings no party may amend or supplement its claim or defence unless the Arbitrator considers it appropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances it considers relevant, including the overriding objective in Article 3. A claim may not be amended in such a manner that the amended claim falls outside the scope of the arbitration clause or separate arbitration agreement.

## 20 Jurisdiction of the Arbitrator

- 20.1 The Arbitrator shall have the power to rule on objections that he or she has no jurisdiction, including any objections

with respect to the existence or validity of the arbitration clause or of the separate arbitration agreement.

- 20.2 The Arbitrator shall have the power to determine the existence or the validity of the contract of which an arbitration clause forms a part. For the purposes of this Article 20, an arbitration clause which forms part of a contract and which provides for arbitration under these Rules shall be treated as an agreement independent of the other terms of the contract. A decision by the Arbitrator that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.
- 20.3 A plea that the Arbitrator does not have jurisdiction shall be raised no later than in the Statement of Defence referred to in Article 18, or, with respect to a counterclaim, in the reply to the counterclaim.
- 20.4 In general, the Arbitrator should rule on a plea concerning his or her jurisdiction as a preliminary question. However, the Arbitrator may proceed with the arbitration and rule on such a plea in his or her final award.

## 21 Further Written Statements

- 21.1 The Arbitrator shall decide which further written statements, in addition to the Statement of Claim, the Statement of Defence and Defence to the Counterclaim, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.
- 21.2 The periods of time fixed by the Arbitrator for the communication of further written statements shall not exceed 14 days.

## 22 Periods of Time

- 22.1 Any times fixed under these Rules may be varied by agreement among the Arbitrator and the parties.

- 22.2 Notwithstanding Article 22.1 the Arbitrator, in exceptional circumstances as determined by the Arbitrator, may vary the times fixed:
- (a) to give effect to the overriding objective set out in Article 3;
  - (b) if the Arbitrator is satisfied that a variation of any fixed time or times is required in the interests of justice;
  - (c) on such terms as to costs or otherwise as the Arbitrator considers reasonable in the circumstances;
  - (d) to a maximum total period of 14 days to the total time fixed under these Rules for actions by each party; and
  - (e) to a maximum total period of 30 days for actions by the Arbitrator.
- 23 Evidence and Hearings
- 23.1 Each party shall have the burden of proving the facts relied upon to support its claim or defence.
- 23.2 The Arbitrator shall have regard to, but is not bound to apply, the International Bar Association Rules on the Taking of Evidence in International Commercial Arbitration in the version current at the commencement of the arbitration.
- 23.3 An agreement of the parties and the Rules (in that order) shall at all times prevail over an inconsistent provision in the International Bar Association Rules on the Taking of Evidence in International Commercial Arbitration.
- 23.4 There shall be no discovery other than in accordance with Article 23.5.



- 23.5 If the Arbitrator believes a party has failed to produce any relevant document, he or she may:
- (a) order that document's production; and
  - (b) draw an adverse inference if the party fails to produce the document without good reason.
- 24 Interim Measures of Protection
- 24.1 In appropriate circumstances, the Arbitrator may, on the request of any party, order interim measures of protection. The Arbitrator may order such measures in the form of an award, or in any other form (such as an order) provided reasons are given, and on such terms as he or she deems appropriate. The Arbitrator shall endeavour to ensure that the measures are enforceable.
- 24.2 An interim measure of protection is any temporary measure by which the Arbitrator orders a party to:
- (a) maintain or restore the status quo pending determination of the dispute;
  - (b) take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm;
  - (c) provide a means of preserving assets out of which a subsequent award may be satisfied;
  - (d) preserve evidence that may be relevant and material to the resolution of the dispute; or
  - (e) provide security for legal or other costs of any party.
- 24.3 Before the Arbitrator orders any interim measure, the party requesting it shall satisfy the Arbitrator that:
- (a) irreparable harm is likely to result if the measure is not ordered;

- (b) such harm substantially outweighs the harm that is likely to result to the party affected by the measure if the measure is granted; and
  - (c) there is a reasonable possibility that the requesting party will succeed on the merits, provided that any determination on this possibility shall not affect the liberty of decision of the Arbitrator in making any subsequent determination.
- 24.4 The Arbitrator may require a party to provide appropriate security as a condition to granting an interim measure.
- 24.5 The requesting party shall promptly disclose in writing to the Arbitrator any material change in the circumstances on the basis of which that party made the request for, or the Arbitrator granted, the interim measure.
- 24.6 The Arbitrator may modify, suspend or terminate any of his or her own interim measures at any time upon the request of any party. In exceptional circumstances the Arbitrator may, on his or her own initiative, modify, suspend or terminate any of his or her own interim measures upon prior notice to the parties.
- 24.7 If the Arbitrator later determines that the measure should not have been granted, he or she may decide that the requesting party is liable to the party against whom the measure was directed for any costs or damages caused by the measure.
- 24.8 The power of the Arbitrator under this Article 23.4 shall not prejudice a party's right to apply to any competent court or other judicial authority for interim measures. Any application and any order for such measures after the appointment of the Arbitrator shall be promptly communicated, in writing, by the applicant to the Arbitrator, all other parties and ACICA.
- 25 Default

- 25.1 If, within the period of time fixed under these Rules, the Respondent has failed to communicate its Statement of Defence without showing sufficient cause for such failure, the Arbitrator shall order that the proceedings continue.
- 25.2 If one of the parties, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the Arbitrator may proceed with the arbitration.
- 25.3 If one of the parties, duly invited to produce documentary evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the Arbitrator may make the award on the evidence before him or her.

26 Waiver of Rules

A party that knows that any provision of, or requirement under, these Rules has not been complied with and yet proceeds with the arbitration without promptly stating its objection to such non-compliance, shall be deemed to have waived its right to object.

SECTION IV: THE AWARD

27 Time for the Final Award

Subject to Articles 22 and 28.6, the Arbitrator shall make the final award within 4 months of the notice of appointment if there is no counterclaim, and otherwise within 5 months.

28 Form and Effect of the Award

- 28.1 In addition to making a final award, the Arbitrator shall be entitled to make interim, interlocutory, or partial awards.
- 28.2 The award shall be made in writing and shall be final and binding on the parties. The parties undertake to carry out the award without delay.

- 28.3 Subject to Article 30.1, the Arbitrator shall state the reasons upon which the award is based in summary form, unless the parties have agreed that no reasons are to be given.
- 28.4 An award shall be signed by the Arbitrator and it shall contain the date on which and the place (which shall be in conformity with Article 15.4) where the award was made.
- 28.5 The Arbitrator shall communicate signed copies of the award to the parties and ACICA.
- 28.6 Before communicating the award to the parties, the Arbitrator shall inquire of ACICA whether there are any outstanding monies due to it. The award shall not be communicated to the parties until ACICA certifies that there are no monies due to it. Time for the Final Award in Article 27 will not run for these purposes.
- 28.7 If the arbitration law of the place where the award is made requires that the award be filed or registered by the Arbitrator, he or she shall comply with this requirement within the period of time required by law.
- 29 Applicable Law, Amiable Compositeur
- 29.1 The Arbitrator shall apply the law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the Arbitrator shall apply the rules of law which he or she considers applicable.
- 29.2 The Arbitrator shall decide as amiable compositeur or ex aequo et bono only if the parties have, in writing, expressly authorized him or her to do so and if the law applicable to the arbitral procedure permits such arbitration.
- 29.3 In all cases, the Arbitrator shall decide in accordance with the terms of any contract and shall take into account any usages of the trade applicable to any transaction the subject of or connected with the dispute.
- 30 Settlement or Other Grounds for Termination

- 30.1 If, before the award is made, the parties agree on a settlement of the dispute, the Arbitrator shall either issue an order for the termination of the arbitral proceedings or, if requested by both parties and accepted by the Arbitrator, record the settlement in the form of an arbitral award on agreed terms. The Arbitrator is not obliged to give reasons for such an award.
- 30.2 If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in Article 30.1, the Arbitrator shall inform the parties of his or her intention to issue an order for the termination of the proceedings. The Arbitrator shall have the power to issue such an order unless a party raises justifiable grounds for objection.
- 30.3 Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the Arbitrator, shall be communicated by the Arbitrator to the parties and ACICA. Where an arbitral award on agreed terms is made, the provisions of Articles 28.2, and 28.4 to 28.7, shall apply.
- 31 Interpretation of the Award
- 31.1 Within 7 days after the receipt of the award, either party, with notice to the other party, may request that the Arbitrator give an interpretation of the award.
- 31.2 The interpretation shall be given in writing within 28 days after the receipt of the request. The interpretation shall form part of the award and the provisions of Articles 28.2 to 28.7, shall apply.
- 32 Correction of the Award
- 32.1 Within 7 days after the receipt of the award, either party, with notice to the other party, may request the Arbitrator to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The Arbitrator may within 28 days after the communication of the award make such corrections on his or her own initiative.

32.2 Such corrections shall be in writing, and the provisions of Articles 28.2 to 28.7 shall apply.

### 33 Additional Award

33.1 Within 7 days after the receipt of the award, either party, with notice to the other party, may request the Arbitrator to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.

33.2 If the Arbitrator considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, he or she shall complete its award within 28 days after the receipt of the request.

33.3 When an additional award is made, the provisions of Articles 28.2 to 28.7, shall apply.

### 34 Costs

The Arbitrator shall fix the costs of arbitration in the award. The term "costs of arbitration" includes only:

- (a) the fees of the Arbitrator, to be fixed in accordance with Article 35;
- (b) the travel (business class airfares) and other reasonable expenses incurred by the Arbitrator;
- (c) the costs of expert advice and of other assistance required by the Arbitrator;
- (d) the travel (business class airfares) and other reasonable expenses of witnesses to the extent such expenses are approved by the Arbitrator;
- (e) the legal and other costs directly incurred by the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the Arbitrator determines that the amount of such costs is reasonable;

- (f) ACICA's registration fee and administration fee; and
- (g) fees for facilities and assistance provided by ACICA in accordance with Articles 7 and 37.5.

### 35 Fees of the Arbitrator

- 35.1 Unless otherwise agreed, the Arbitrator shall be remunerated on the basis of an hourly rate.
- 35.2 The hourly rate shall be agreed between the parties and the Arbitrator or, failing agreement, shall be determined by ACICA.
- 35.3 Unless otherwise agreed in writing, the hourly rate will be exclusive of GST, value added tax or any other like tax which may apply.
- 35.4 Where ACICA is requested to determine the hourly rate, it shall take into account, inter alia:
  - (a) the nature of the dispute and the amount in dispute, insofar as it is aware of them; and
  - (b) the standing and experience of the Arbitrator.

### 36 Apportionment of Costs

- 36.1 Except as provided in Article 36.2, the costs of arbitration shall in principle be borne by the unsuccessful party. However, the Arbitrator may apportion each of such costs between the parties if he or she determines that apportionment is reasonable, taking into account the circumstances of the case.
- 36.2 With respect to the costs referred to in Article 34(e), the Arbitrator, taking into account the circumstances of the case, shall be free to determine which party shall bear such costs or may apportion such costs between the parties if he or she determines that apportionment is reasonable.
- 36.3 When the Arbitrator issues an order for the termination of the arbitral proceedings or makes an award on agreed terms,

he or she shall fix the costs of arbitration referred to in Article 34 in that order or award.

- 36.4 No additional fees may be charged by an Arbitrator for interpretation or correction or completion of an award under Articles 31 to 33.
- 37 Deposit of Costs
- 37.1 The Arbitrator, on his or her appointment, shall request each party to deposit an equal amount as an advance for any costs referred to in Article 34(a), (b), (c), (f) and (g).
- 37.2 Where a Respondent submits a counterclaim, or it otherwise appears appropriate in the circumstances, the Arbitrator may in his or her discretion establish separate deposits.
- 37.3 During the course of the arbitral proceedings the Arbitrator may from time to time request supplementary deposits from the parties.
- 37.4 The Arbitrator shall fix the amount of any deposit or supplementary deposits only after consultation and with the approval of ACICA.
- 37.5 With the consent of ACICA, the Arbitrator may lodge the deposits in a trust account maintained by ACICA. ACICA shall disburse those funds on the instructions of the Arbitrator. ACICA may make a charge for its trust account services.
- 37.6 If the required deposits are not paid in full within 21 days after the receipt of the request, the Arbitrator 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 Arbitrator may order the suspension or termination of the arbitral proceedings.
- 37.7 After the award has been made, the Arbitrator shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.



SECTION V: GENERAL

38 Decisions Made by ACICA

38.1 Decisions made by ACICA will be made by the ACICA Board of Directors, or by any person(s) to whom the Board of Directors has delegated decision making authority.

38.2 Decisions made by ACICA with respect to all matters relating to the arbitration shall be conclusive and binding upon the parties and the Arbitrator. ACICA shall not be required to give any reasons.

38.3 To the extent permitted by the law of the seat of the arbitration, the parties shall be taken to have waived any right of appeal or review in respect of any such decisions made by ACICA to any State court or other judicial authority.

38.4 Neither ACICA nor its members, officers, servants or agents shall be liable for making any decision or taking any action or failing to make any decision or take any action under these Rules.

39 Liability of Arbitrator

The Arbitrator shall not be liable for any act or omission in connection with any arbitration conducted by reference to these Rules save where the act or omission is fraudulent.

APPENDIX A: ACICA's Fees

1 Registration Fee

1.1 The reference in these Rules to "dollars" or "\$" is to Australian currency.

1.2 When submitting the Notice of Arbitration the Claimant shall pay to ACICA a registration fee of \$2,500. The registration fee is not refundable.

2 Administration Fee

2.1 The parties shall pay to ACICA an administrative fee as specified in Schedule 1.

- 2.2 For the purposes of determining the amount in dispute:
- (a) claims, counterclaims and set-off defences shall be added together;
  - (b) amounts claimed for interest shall not be taken into account, unless the interest claim exceeds the principal amount claimed, in which case the interest claims alone shall be considered in calculating the amount in dispute;
  - (c) claims expressed in currencies other than in Australian dollars shall be converted into Australian dollars at the rate of exchange applicable on the day when ACICA received the Notice of Arbitration; and
  - (d) if the amount in dispute is not specified in the Statement of Claim or counterclaim, the amount in dispute shall be determined by the Arbitrator taking into account all relevant circumstances.

#### Schedule 1

<u>Amount in Dispute</u>	<u>Administrative Fees</u>
\$1 to \$250,000	0.5% of the amount in dispute
\$250,001 to \$500,000 .....	\$1,250 plus 1% of the amount in dispute above \$250,000
\$500,001 to \$1,000,000 .....	\$3,750 plus 0.5% of the amount in dispute above \$500,000
\$1,000,001 to \$10,000,000 .....	\$6,250 plus 0.25% of the amount in dispute above \$1,000,000
\$10,000,001 to \$100,000,000.....	\$28,750 plus 0.01% of the amount in dispute above \$10,000,000
over \$100,000,000 .....	\$37,750 plus 0.02% of the amount in dispute above \$100,000,000 up to a maximum of \$60,000

APPENDIX B: ACICA's Contact Details

- 1 Sydney Office  
Level 6, 50 Park Street  
Sydney NSW 2000  
Telephone: +61 (0) 2 9286 3591  
Facsimile: +61 (0) 2 9267 3125  
Email: [secretariat@acica.org.au](mailto:secretariat@acica.org.au)
  
- 2 Melbourne Office  
470 Bourke Street  
Melbourne VIC 3000  
Telephone: +61 (0) 3 9286 6384  
Facsimile: +61 (0) 3 9286 6460  
Email: [secretariat@acica.org.au](mailto:secretariat@acica.org.au)
  
- 3 Perth Office  
Murdoch University  
South Street  
Murdoch WA 6150  
Telephone: +61 (0) 8 9360 7563  
Email: [secretariat@acica.org.au](mailto:secretariat@acica.org.au)

These details are correct as at 1 August 2008. Please check the ACICA website for any changes - [www.acica.org.au](http://www.acica.org.au)

***C. Institution Contact Details***

**Sydney Office**

Level 6, 50 Park Street  
Sydney NSW 2000  
Telephone: +61 (0) 2 9286 3591  
Facsimile: +61 (0) 2 9267 3125  
Email: [secretariat@acica.org.au](mailto:secretariat@acica.org.au)

**Melbourne Office**

470 Bourke Street  
Melbourne VIC 3000  
Telephone: +61 (0) 3 9286 6384  
Facsimile: +61 (0) 3 9286 6460  
Email: [secretariat@acica.org.au](mailto:secretariat@acica.org.au)

**Perth Office**

Murdoch University

South Street

Murdoch WA 6150

Telephone: +61 (0) 8 9360 7563

Email: [secretariat@acica.org.au](mailto:secretariat@acica.org.au)

***D. Citations and Bibliography***

**Simon Greenberg**, “ACICA’s New International Arbitration Rules,”  
Journal of International Arbitration 23(2), 2006, p.189.

**Samuel Luttrell/ Gabriël Moens**, “Commentary on the Arbitration  
Rules of the Australian Centre for International Commercial  
Arbitration,” at <http://www.acica.org.au>