



**VANCOUVER  
INTERNATIONAL  
ARBITRATION  
CENTRE**

**DOMESTIC ARBITRATION RULES**

(EFFECTIVE SEPTEMBER 1, 2020)

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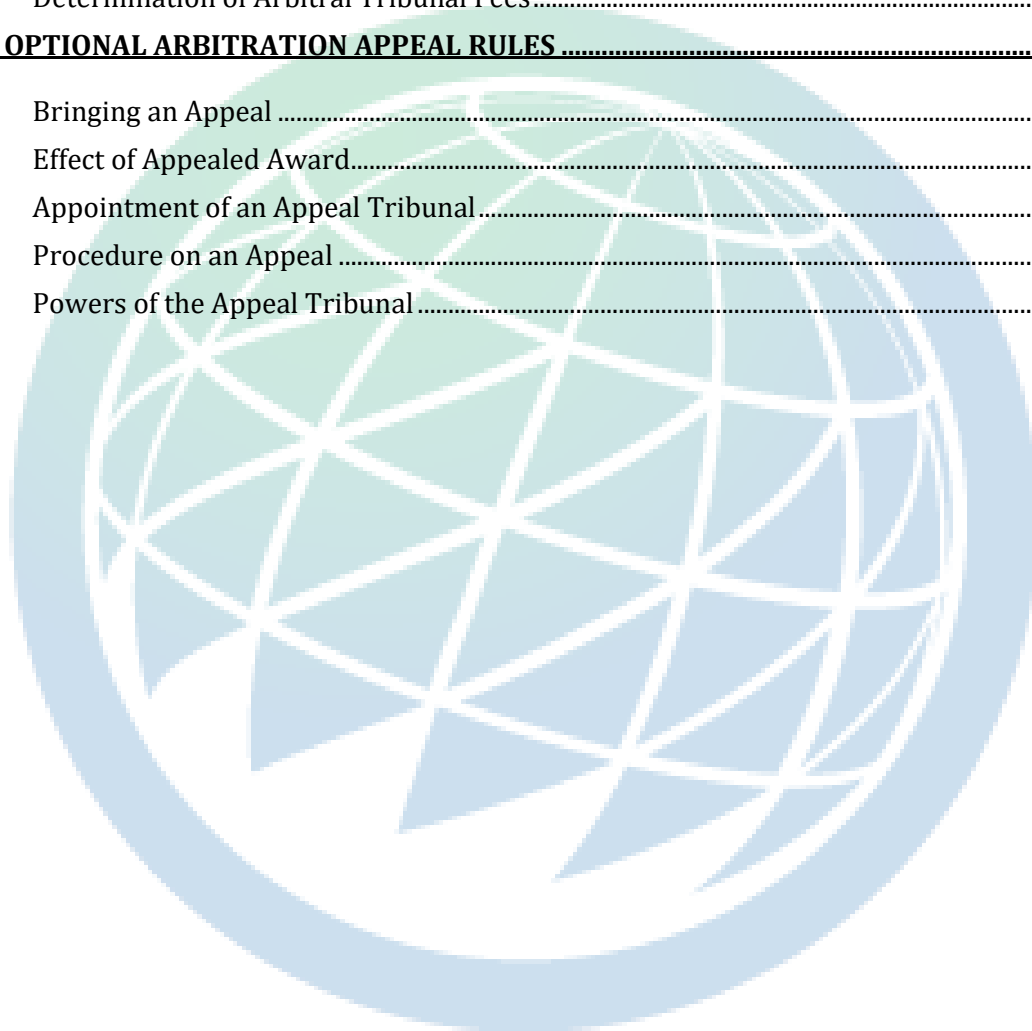
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# VANCOUVER INTERNATIONAL ARBITRATION CENTRE

## VANCOUVER INTERNATIONAL ARBITRATION CENTRE

### DOMESTIC ARBITRATION RULES

#### **INTRODUCTION**

These Rules are to be read with the Act. An arbitration conducted under these Rules will be conducted in accordance with the provisions in the Act as modified or supplemented by these Rules where the Act permits parties to agree to their own procedures. Parts A, B and D apply to arbitrations administered by the Centre. By agreeing to these Rules the parties agree that the Centre is the only body authorized to administer these Rules.

Part C of these Rules apply to the Centre's exercise of its statutory responsibilities as the designated appointing authority under the Act.

#### **PART A: GENERAL PROVISIONS**

##### **1. Interpretation**

- (a) "Rules" means these Vancouver International Arbitration Centre Domestic Arbitration Rules, including the *Fee Schedule for Domestic Arbitration*, as amended from time to time.
- (b) In these Rules,
  - (i) "Act" means the *Arbitration Act*, S.B.C. 2020, c. 2;
  - (ii) terms and phrases have the same meanings as the Act, unless expressly stated otherwise;
  - (iii) terms and phrases have the same meanings as defined in the Interpretation Act, R.S.B.C. 1996, c. 238, unless expressly stated otherwise by the Act or these Rules;
  - (iv) "Appeal Tribunal" means an Arbitral Tribunal comprised of 3 arbitrators appointed from the Centre's Panel or pursuant to the Act;

- (v) “Centre” means the Vancouver International Arbitration Centre in Vancouver, British Columbia as represented by any delegate of the Centre, including any committee of the Centre’s Board of Directors;
- (vi) “Referee” means the individual appointed by the Centre from the Centre’s Panel to perform functions under section 52 and section 55 of the Act; and
- (vii) “Panel” means the Centre’s Panel of arbitrators.

## 2. Application

- (a) The Centre shall administer an arbitration commenced on or after September 1, 2020 under these Rules:
  - (i) where any agreement, submission or reference provides for arbitration under the Rules, or the rules of the British Columbia International Commercial Arbitration Centre, or BCICAC, and the arbitration is not subject to the *International Commercial Arbitration Act*, RSBC 1996, c. 233;
  - or,
  - (ii) the parties otherwise agree to arbitrate under the Rules of the Centre.
- (b) These Rules apply to all arbitrations commenced through the Centre on or after September 1, 2020, except as otherwise provided for in these Rules.
- (c) The Centre shall administer the services as designated appointing authority under the Act in accordance with Part C of these Rules.
- (d) The following determinations of the Centre will be made by a committee of the Centre’s Board of Directors:
  - (i) Part A, Rule 3(c) (extensions of time);
  - (ii) Part A, Rule 8(c)(iv) and (vi) (appointment of Arbitral Tribunal);
  - (iii) Part A, Rule 11(a) (appointment of Emergency arbitrator);
  - (iv) Part B, Rule 24(c)(iii) (determination that arbitration is not suitable to Expedited Procedures);
  - (v) Part C, Rule 28(b)(iv) and (vi) (appointment of Arbitral Tribunal); and
  - (vi) Part D, Rule 33(e) (appointment of Appeal Tribunal).
- (e) The following determinations of the Centre will be made by the Centre’s staff in consultation, if necessary, with a committee of the Centre’s Board of Directors:
  - (i) Part A, Rule 8(c)(ii) (lists of arbitrators); and
  - (ii) Part C, Rule 28(b)(ii) (lists of arbitrators).

- (f) All determinations of the Centre are final and not subject to appeal or review of any kind.

### **3. Time**

- (a) In these Rules, where the time for doing an act falls or expires on a Saturday, Sunday or holiday, the time is extended to the next day that is not a Saturday, Sunday or holiday.
- (b) In these Rules, in the calculation of time, the first day shall be excluded and the last day included.
- (c) The Centre may, at any time, extend a period of time set out in these Rules, other than a period of time fixed or determined by an Arbitral Tribunal.

### **4. Communications**

- (a) Any written communications required or permitted to be delivered under these Rules may be delivered personally, by mail, electronically or by other means of telecommunication which provide a record of delivery.
- (b) Each party to an arbitration shall provide an electronic address for delivery with its first filing with the Centre.
- (c) A party may change its address for delivery by giving written notice to the other parties, the Centre, and the Arbitral Tribunal.
- (d) Following the formation of the Arbitral Tribunal:
  - (i) parties shall promptly deliver written notice to the other parties, the Centre, and the Arbitral Tribunal regarding any intended change to a party's legal counsel; and
  - (ii) any change to a party's legal counsel shall be subject to the approval of the Arbitral Tribunal in order to address any prejudice arising from the change, including potential conflicts with the Arbitral Tribunal.
- (e) Documents and communications regarding the arbitration should only be communicated to the Arbitral Tribunal by a party while in the presence of the other parties (including virtual presence by video or phone), or by way of documents copied to the other parties, unless otherwise agreed or as set out in these Rules.

## **COMMENCEMENT OF ARBITRATION**

### **5. Process for Commencement**

- (a) An arbitration is commenced by a claimant delivering both a written Notice to Arbitrate to the respondent(s) and to the Centre and payment of required commencement fee as set out in the *Fee Schedule for Domestic Arbitration*. The Notice to Arbitrate shall contain:

- (i) the names of the parties to the dispute and their legal counsel, if any, together with their addresses for delivery;
  - (ii) a brief statement of the matter in dispute;
  - (iii) a request that the dispute be referred to arbitration;
  - (iv) reference to and copies of any contract relating to the dispute, including any arbitration clause or agreement relied on;
  - (v) the remedy sought, including the amount claimed or an estimate of the amount claimed;
  - (vi) the number of arbitrators that will make up the Arbitral Tribunal;
  - (vii) the names of arbitrators proposed or agreed upon, if any;
  - (viii) the required qualifications of the arbitrators as agreed to by the parties, if any; and
  - (ix) any modification of these Rules which has been agreed to by the parties.
- (b) The parties may use the Notice to Arbitrate form included as Schedule “A” to these Rules.

**6. Commencement Date**

- (a) The arbitration is deemed to have commenced when the Notice to Arbitrate has been delivered to the Centre and the commencement fee has been paid. The Centre shall notify the parties when an arbitration has commenced and identify the deemed commencement date.

**7. Counterclaim or Setoff**

- (a) Unless Rule 24(e) of the Expedited Procedures applies, a Notice of Counterclaim shall be delivered to the Centre and the required fee paid as set out in the *Fee Schedule for Domestic Arbitration* within 21 days of the commencement of the arbitration.
- (b) The Notice of Counterclaim shall contain:
- (i) a brief statement of the matter giving rise to the Counterclaim or any claimed setoff;
  - (ii) reference to any contract relating to the dispute not referred to in the Notice to Arbitrate; and
  - (iii) the remedy sought including, the amount claimed or an estimate of the amount claimed.
- (c) The parties may use the Notice of Counterclaim form included as Schedule “B” to these Rules.

## APPOINTMENT OF ARBITRAL TRIBUNAL WHERE NO AGREEMENT

### 8. Appointment

- (a) If the parties have not agreed on a procedure for appointing the Arbitral Tribunal or have not agreed on the selection of the Arbitral Tribunal within 15 days of commencement of the arbitration, any party may apply to the Centre to appoint the Arbitral Tribunal. No fee is payable for appointment services where the arbitration is administered by the Centre and the commencement fee has been paid.
- (b) In appointing the Arbitral Tribunal under Rule 8(a), the Centre will have due regard to any method of appointment, selection criteria or qualifications agreed to in writing by the parties. The Centre will also have due regard to any other considerations as are likely to secure the appointment of an independent and impartial Arbitral Tribunal.
- (c) Unless otherwise agreed by the parties, where an application is made to the Centre to appoint a sole or presiding arbitrator, the following procedure shall be used:
  - (i) the applicant shall provide the Centre with the names of arbitrators previously considered by the parties to the arbitration;
  - (ii) the Centre shall deliver to each party an identical list of at least 4 names of proposed arbitrators, together with a brief description of each proposed arbitrator;
  - (iii) within 2 days of the list being delivered by the Centre, each party shall respond by delivering to the Centre a list of its order of preference of the proposed names and any name to which it objects;
  - (iv) taking into consideration the objections and the order of preference in the lists delivered by the parties, if any, the Centre may appoint an arbitrator from among the names on the list within 5 days, or deliver to each party a second list of at least 4 other names;
  - (v) in the event the Centre delivers a second list of names to the parties, each party shall respond by delivering to the Centre a list of its order of preference of the proposed names and any name to which it objects within 2 days;
  - (vi) taking into consideration the objections and the order of preference in the lists delivered by the parties, if any, the Centre will appoint an arbitrator within 5 days of delivering the second list; and
  - (vii) a party shall not communicate directly with any proposed arbitrator. Any requests for more information about a proposed arbitrator shall be directed to the Centre. On request, the Centre will endeavour to provide more information about a proposed arbitrator.



## **EMERGENCY RELIEF BEFORE THE CONSTITUTION OF THE ARBITRAL TRIBUNAL**

### **9. Application for Emergency Interim Measure**

- (a) Subject to Rule 10(b), a party may apply for an emergency interim measure before the constitution of the Arbitral Tribunal by delivering an application to the Centre and all other parties concurrently with or following the delivery of a Notice to Arbitrate together with the required fee as set out in the *Fee Schedule for Domestic Arbitration*. The application shall contain:
  - (i) a description of the circumstances giving rise to the application;
  - (ii) the relief sought;
  - (iii) the reasons why the applicant requires an emergency interim measure prior to the constitution of the Arbitral Tribunal; and
  - (iv) any other documents or information relevant to the application.
- (b) The parties may use the Application for Emergency Interim Measure form included as Schedule "C" to these Rules.

### **10. Application for Emergency Preliminary Order**

- (a) A party may apply for an emergency preliminary order directing a party not to frustrate the purpose of the interim measure under section 37 of the Act at the same time as applying for an emergency interim measure by delivering an application for an emergency preliminary order to the Centre concurrent with or following the delivery of a Notice to Arbitrate together with the required fee as set out in the *Fee Schedule for Domestic Arbitration*.
- (b) An application for an emergency interim measure made at the same time as an emergency preliminary order under section 37 of the Act, may be made without notice to the other parties.
- (c) The emergency arbitrator shall establish a procedure for the application for an emergency preliminary order forthwith upon appointment. The procedure shall be consistent with section 38 of the Act.
- (d) The parties may use the Application for Emergency Preliminary Order form included as Schedule "D" to these Rules.

### **11. Appointment of Emergency Arbitrator**

- (a) The Centre shall appoint an emergency arbitrator within 2 days of the Centre's receipt of an application for an emergency interim measure. Once an emergency arbitrator has been appointed, the Centre shall notify the parties and transfer the application for emergency arbitration to the emergency arbitrator.

- (b) In the case of an application made by a party without notice for an emergency preliminary order together with an emergency interim measure, the Centre shall notify only the applicant of the appointment of the emergency arbitrator.
- (c) Unless otherwise agreed by the parties, an emergency arbitrator appointed under these Rules cannot be appointed as part of the Arbitral Tribunal in the same arbitration.

## **12. Challenge of an Emergency Arbitrator**

- (a) To challenge an emergency arbitrator a party shall deliver a written statement of challenge to the arbitrator and the Centre setting out detailed reasons for the challenge. The written statement shall be delivered no later than 2 days after the appointment of that arbitrator or 2 days after the circumstances giving rise to the challenge became known to that party.
- (b) If the challenged arbitrator agrees to withdraw or all other parties to the arbitration agree to the challenge, the challenged arbitrator shall withdraw from the arbitration. In neither case shall the validity of the grounds for challenge be implied.
- (c) If the challenged arbitrator does not withdraw, that arbitrator shall decide on the challenge.
- (d) In the event a challenged arbitrator withdraws, the Centre will appoint a replacement emergency arbitrator within 2 days of being advised by a party or the emergency arbitrator of the withdrawal.

## **13. Emergency Arbitration Proceedings**

- (a) The emergency arbitrator shall establish a procedural schedule for the application for an emergency interim measure within 3 days of appointment.

## **14. Emergency Awards and Orders**

- (a) The emergency arbitrator's decision shall take the form of an interim measure or preliminary order and be binding on the parties. The emergency arbitrator shall issue any interim measure or preliminary order within 15 days of appointment.
- (b) The emergency arbitrator may issue an interim measure or preliminary order under Rule 14(a) after the Arbitral Tribunal has been constituted but shall not have any further powers.
- (c) An interim measure or preliminary order issued under this Rule may be modified by the emergency arbitrator or the Arbitral Tribunal and shall cease to be binding if:
  - (i) the emergency arbitrator or the Arbitral Tribunal so decides;
  - (ii) the arbitration is terminated before a final award is made by the Arbitral Tribunal; or

- (iii) a final award is made by the Arbitral Tribunal, unless the Arbitral Tribunal expressly decides otherwise.

**15. Application of this Part**

- (a) This Part shall not apply if the parties have agreed in writing to opt out of the emergency arbitrator provisions.
- (b) Nothing in this Part derogates from the jurisdiction of an Arbitral Tribunal once constituted to issue preliminary orders or orders for interim measures.

**CONDUCT OF THE PROCEEDING**

**16. Initial Procedural Conference**

- (a) The Arbitral Tribunal shall convene an initial procedural conference within 10 days of appointment for the purpose of organizing and scheduling procedures for submissions and any hearing.
- (b) In establishing procedures and in order to increase the efficiency and economy of the proceedings the parties and Arbitral Tribunal shall consider:
  - (i) whether the Expedited Procedures set out in Part B of these Rules may be used; and
  - (ii) whether videoconference and other technology are appropriate, including any of the Virtual Hearing procedures in Rule 21.
- (c) Unless otherwise agreed by the parties, or directed by the Arbitral Tribunal, in-person hearings shall take place in Vancouver, British Columbia.
- (d) The legal seat of the arbitration shall be Vancouver, British Columbia, unless otherwise agreed to by the parties or directed by the Arbitral Tribunal on the basis that another arbitral seat is more appropriate.
- (e) Following the initial procedural conference the Arbitral Tribunal shall deliver a procedural schedule that includes deadlines for any jurisdictional objections, submissions by the parties and any hearing dates.

**17. Exchange of Materials**

- (a) Unless otherwise agreed by the parties or directed by the Arbitral Tribunal:
  - (i) parties asserting claims or counterclaims in the arbitration shall deliver to the Arbitral Tribunal by no later than the date(s) directed by the Arbitral Tribunal:
    - (a) the parties' written arguments in respect of their claims against any other party;
    - (b) expert reports;

- (c) witness statements; and
- (d) supporting documents and legal authorities;
- (ii) all parties responding to claims or counterclaims in the arbitration shall deliver to the Arbitral Tribunal by no later than the date(s) directed by the Arbitral Tribunal:
  - (a) the parties' written arguments responding to the claims advanced by the other party,
  - (b) responding expert reports;
  - (c) responding witness statements; and
  - (d) responding supporting documents and legal authorities.
- (b) The Arbitral Tribunal may make orders for additional submissions and evidence to be delivered prior to the hearing including reply and rejoinder and may place page limits on any written argument.
- (c) Each party's written argument, witness statements and expert reports shall be accompanied by any supporting documentary evidence.
- (d) Unless otherwise agreed by the parties to the arbitral proceedings or directed by the Arbitral Tribunal, the direct evidence of a witness shall be provided by way of a written witness statement.
- (e) All supporting documentary evidence must be referenced in the written argument, witness statements or expert reports. No new documentary evidence may be presented at the hearing unless agreed by the parties or ordered by the Arbitral Tribunal.

**18. Witness Statements**

- (a) Any person may present evidence as a witness, including a party, a party's officer, employee or other representative, or a third party.
- (b) Unless otherwise agreed by the parties or directed by the Arbitral Tribunal, each witness statement shall:
  - (i) contain the name of the witness and his or her relationship to any of the parties (past and present, if any);
  - (ii) contain a full and detailed description of the facts, and the source of the witness' information as to those facts, sufficient to serve as that witness' direct evidence;
  - (iii) contain a confirmation of the truth of the statement;
  - (iv) be signed by the witness and give the date and place of signature; and

- (v) identify with specificity any document or other material relied on.
- (c) Originally signed versions of witness statements need not be provided and witness statements need not be formally sworn or affirmed.

## 19. Production of Documents

- (a) Oral and documentary discovery procedures developed for and used in court procedures are generally not appropriate procedures for obtaining documents and information in an arbitration under these Rules.
- (b) Unless otherwise agreed by the parties or directed by the Arbitral Tribunal, requests for documents shall not be made until there has been an exchange of written arguments, witness statements and supporting documentation.
- (c) The parties shall exchange any requests for documents at a date to be set by the Arbitral Tribunal.
- (d) The parties shall record each request and the rationale for each request. A response to a request for documents shall identify whether each request for production is accepted, accepted in part or objected to, together with the reasons for any objection.
- (e) Requests for electronic document searches must be narrowly focused and structured to enable the efficient searching of databases.
- (f) The parties may use the Request for Documents Schedule included as Schedule "E" to these Rules.
- (g) The Arbitral Tribunal shall determine any objections and may order a party to produce any documents at a date to be set by the Arbitral Tribunal. In determining objections to the production of documents, the Arbitral Tribunal must be satisfied that the documents requested are relevant to an issue in the arbitration and material to the outcome of the arbitration. The Arbitral Tribunal shall not order production of the requested documents if it is satisfied that:
  - (i) production of the requested documents would impose an unreasonable burden on the responding party;
  - (ii) the documents are protected by any applicable privilege; or
  - (iii) there are compelling considerations of confidentiality, procedural economy, proportionality, fairness or equality of the parties upon which production should be refused.
- (h) Unless otherwise agreed to by the parties or directed by the Arbitral Tribunal, each document produced shall contain a unique document identifier and the producing party shall identify the request to which the document is responsive.
- (i) The Arbitral Tribunal may make ancillary orders with respect to the means and methods of production of documents and may direct any other steps necessary to safeguard the efficiency of the arbitration.

- (j) The Arbitral Tribunal may draw adverse inferences if it finds that a party has failed to produce requested documents ordered or agreed to be produced by the party. The Arbitral Tribunal may also take a failure to produce such documents into account in exercising its discretion as to costs.

## **20. Time for Delivery of Award**

- (a) Unless otherwise agreed by the parties or directed by the Arbitral Tribunal, the Arbitral Tribunal shall issue an award within 60 days of the latter of the close of the hearing and the last written submissions received by the Arbitral Tribunal.

## **VIRTUAL HEARINGS**

### **21. General**

- (a) Where the parties agree or are directed by the Arbitral Tribunal to proceed by way of Virtual Hearing, the Arbitral Tribunal may issue directions on :
  - (i) The video conferencing platform to be used for the arbitration that provides for:
    - (a) clear video and audio transmission;
    - (b) if necessary, allows for virtual breakout rooms for each party; and
    - (c) if necessary, allows witnesses, the Arbitral Tribunal, and the parties to simultaneously view documents.
  - (ii) A backup system of communication.
- (b) Unless otherwise agreed by the parties, the only persons entitled to access or attend a Virtual Hearing are:
  - (i) the parties;
  - (ii) the parties' legal representatives;
  - (iii) witnesses during their examination;
  - (iv) the Arbitral Tribunal;
  - (v) any Arbitral Tribunal secretary; and
  - (vi) third party service providers, including but not limited to interpreters and transcription service providers.
- (c) Any party may request that the Arbitral Tribunal test the videoconferencing platform prior to a Virtual Hearing, provided that such party shall book necessary venues and coordinate with the parties and Arbitral Tribunal regarding arrangements relating to the test.

- (d) Prior to the Virtual Hearing, the Arbitral Tribunal shall consider and provide direction with respect to the procedures for the Virtual Hearing including:
- (i) how witness statements, expert reports and other documents referenced in the Virtual Hearing will be shared with the Arbitral Tribunal, witnesses and counsel;
  - (ii) procedures for the examination of lay and expert witnesses, including: exclusion of witnesses prior to their examination, restrictions on communications with a witness, and excluding a witness during their examination to address objections;
  - (iii) any special restrictions or procedures for hearings that are held in part in person and in part virtually;
  - (iv) procedures for use of virtual breakout rooms for each party;
  - (v) procedures for the participation of interpreters; and
  - (vi) whether a recording or transcription of the Virtual Hearing will be made and who will have access to any recording or transcription.

## **FEES**

### **22. Payment of Fees to the Centre**

- (a) The fees for arbitrations conducted under these Rules are set out in the Centre's *Fee Schedule for Domestic Arbitration*, as amended from time to time.
- (b) In addition to the fees set out in the Centre's *Fee Schedule for Domestic Arbitration*, the Centre shall be reimbursed for any expenses that it incurs on behalf of the parties.
- (c) Fees and expenses payable to the Centre are non-refundable.

### **23. Arbitral Tribunal Fees**

- (a) The Arbitral Tribunal may, from time to time, require each party to make deposits, either with the Centre in trust, or otherwise, as an advance for the anticipated Arbitral Tribunal's fees.
- (b) If the required deposits are not made within 15 days after receipt of the request from the Arbitral Tribunal, the Arbitral Tribunal shall inform the parties in order that another party may make the required payment.
- (c) If the required deposits are not made, the Arbitral Tribunal may order the suspension or termination of the proceeding.
- (d) If a party pays a required deposit on behalf of another party, the Arbitral Tribunal may, at the request of the paying party, make an award for reimbursement of the payment at any time.

## PART B: EXPEDITED PROCEDURES

### 24. Application of this Part

- (a) These Expedited Procedures shall apply if:
  - (i) the parties agree; or
  - (ii) no claim, or estimate of the amount claimed, by any one party in a Notice to Arbitrate or Notice of Counterclaim exceeds \$250,000 exclusive of interest and costs.
- (b) By agreeing to arbitration under these Rules, the parties agree that the Expedited Procedures set forth in this Part shall take precedence over any contrary terms in the arbitration agreement or in these Rules.
- (c) The Expedited Procedures shall not apply if:
  - (i) the parties have agreed to an Arbitral Tribunal consisting of more than one arbitrator;
  - (ii) the parties have agreed to opt out of the Expedited Procedures; or
  - (iii) the Centre determines at any time prior to the appointment of the Arbitral Tribunal that the arbitration is not suitable for the Expedited Procedures.
- (d) The Centre will advise the parties of an arbitration commenced by a Notice to Arbitrate that meets the requirements of Rule 24(a)(ii) at the same time that the Centre advises the parties of the commencement date of the arbitration.
- (e) A Notice of Counterclaim delivered in response to a Notice of Arbitration that meets the requirement of Rule 24(a)(ii) shall be delivered within 10 days of commencement of the arbitration with the required fee set out in the *Fee Schedule for Domestic Arbitration*.
- (f) Prior to an Arbitral Tribunal accepting appointment under the Expedited Procedures the Arbitral Tribunal shall be provided with the Notice of Arbitration and any Notice of Counterclaim delivered by the parties. The Arbitral Tribunal may refuse appointment if the Arbitral Tribunal is not prepared to be compensated to determine the claims set out in the Notice of Arbitration and any Notice of Counterclaim in accordance with the flat fee arrangements in the *Fee Schedule for Domestic Arbitration*.
- (g) The Arbitral Tribunal accepting appointment under the Expedited Procedures shall be compensated in accordance with the flat fee arrangements in the *Fee Schedule for Domestic Arbitration*. The flat fee arrangements do not apply where the parties have agreed to the Expedited Procedures and there are claims or counterclaims exceeding \$250,000 exclusive of interest, legal fees, and other arbitration costs.
- (h) Any new or amended claim or counterclaim in excess of \$250,000, exclusive of interest and costs, requires the consent of an Arbitral Tribunal that has accepted the



appointment on the basis of the flat fee arrangements in the *Fee Schedule for Domestic Arbitration*.

- (i) The Arbitral Tribunal's consent under Rule 24(h) may be subject to terms including compensation of the Arbitral Tribunal in addition to the flat fee arrangements in the *Fee Schedule for Domestic Arbitration*. The Arbitral Tribunal's consent may also be subject to terms regarding the allocation between the parties of deposits and payment of any additional compensation of the Arbitral Tribunal.
- (j) An Arbitral Tribunal under the Expedited Procedures cannot award a total amount to any one party in excess of \$250,000 exclusive of interest and costs, unless the Arbitral Tribunal has consented to a new or amended claim or counterclaim in excess of \$250,000 under Rule 24(h).

## 25. **Hearings and Evidence**

- (a) Procedures and jurisprudence regarding suitability or other issues relating to summary disposition procedures in court proceedings have no application under this Part.
- (b) Unless otherwise agreed by the parties or directed by the Arbitral Tribunal:
  - (i) subject to Rules 25(d) and 25(g), a final award will be issued without an oral hearing based on written material delivered to the Arbitral Tribunal;
  - (ii) the written material exchanged by the parties may include written argument, witness statements, expert reports and supporting documentary evidence;
  - (iii) the Arbitral Tribunal shall set a procedural schedule including deadlines for the exchange of written material; and
  - (iv) all written material shall be exchanged by no later than 90 days from the appointment of the Arbitral Tribunal.
- (c) Any party may apply for an oral hearing within 5 days following delivery of all written material.
- (d) The Arbitral Tribunal shall order an oral hearing only where the Arbitral Tribunal is satisfied that an oral hearing is necessary, having regard to the Arbitral Tribunal's duties under section 21 of the Act.
- (e) Subject to Rule 25(g), any arbitral order requiring oral hearings will restrict such hearings to a maximum of one day and will specify what cross-examinations or submissions are to be heard orally.
- (f) In the event of an oral hearing not exceeding one day, the Arbitral Tribunal shall be compensated on an hourly basis in accordance with the hourly fee arrangements in the *Fee Schedule for Domestic Arbitration*.

- (g) In extraordinary circumstances, the Arbitral Tribunal may exercise its discretion to order an oral hearing exceeding one day, if it would be otherwise impossible for the Arbitral Tribunal to satisfy its duties under section 21 of the Act.
- (h) In the event of an oral hearing exceeding one day, the Arbitral Tribunal's compensation will not be governed by the flat fee or hourly fee arrangements in the *Fee Schedule for Domestic Arbitration*. Any order for an oral hearing exceeding one day may also be subject to terms regarding the allocation between the parties of deposits and payment of any additional compensation to the Arbitral Tribunal.
- (i) The Arbitral Tribunal may at any time:
  - (i) seek oral submissions from one or more parties;
  - (ii) extend any deadlines set out in this Part;
  - (iii) order that cross-examination before the Arbitral Tribunal take place by telephone, video conference or in person; or
  - (iv) order that all or any part of oral submissions take place by telephone, video conference or in person.

## **26. Time for Delivery of Award under Expedited Procedures**

- (a) Unless otherwise agreed by the parties or directed by the Arbitral Tribunal:
  - (i) the Arbitral Tribunal shall issue an award within 30 days of the last written material received by the Arbitral Tribunal where no oral hearing has been ordered; and
  - (ii) the Arbitral Tribunal shall issue an award within 45 days of the conclusion of the oral hearing where an oral hearing has been ordered.

## **27. Appeals**

- (a) For arbitrations brought under an arbitration agreement entered into on or after September 1, 2020 that provide for arbitration under these Rules, the parties expressly agree that there shall be no appeal on a question of law from an Award issued under the Expedited Procedure, unless consented to by both parties.

## **PART C: DESIGNATED APPOINTING AUTHORITY UNDER THE ACT**

### **28. Appointment of Arbitrator Under Act**

- (a) Where the arbitration is not administered by the Centre, the Centre will appoint Arbitral Tribunal members pursuant to section 14 of the Act or as otherwise agreed by the parties. In such circumstances, payment of the applicable fees set out in the *Fee Schedule for Domestic Arbitration* shall be paid at the same time as the request for appointment services.

- (b) Unless otherwise agreed by the parties, where an application is made to the Centre to appoint a sole or presiding arbitrator, the following procedure shall be used:
- (i) the applicant shall provide the Centre with the names of arbitrators previously considered by the parties to the arbitration;
  - (ii) the Centre shall deliver to each party an identical list of at least 4 names of proposed arbitrators, together with a brief description of each proposed arbitrator;
  - (iii) within 2 days of the list being delivered by the Centre, each party shall respond by delivering to the Centre a list of its order of preference of the proposed names and any name to which it objects;
  - (iv) taking into consideration the lists delivered by the parties, if any, the Centre may appoint an arbitrator from among the names on the list within 5 days of receiving, or deliver to each party a second list of at least 4 other names;
  - (v) in the event the Centre delivers a second list of names to the parties, each party shall respond by delivering to the Centre a list of its order of preference of the proposed names and any name to which it objects within 2 days;
  - (vi) taking into consideration the lists delivered by the parties, if any, the Centre will appoint an arbitrator within 5 days of delivering the second list; and
  - (vii) a party shall not communicate directly with any proposed arbitrator. Any requests for more information about a proposed arbitrator shall be directed to the Centre. On request, the Centre will endeavour to provide more information about a proposed arbitrator.
- (c) If a party has applied to the Centre to make an appointment, the Centre will have due regard to any method of appointment or selection criteria agreed in writing by the parties. The Centre will also have due regard to any qualifications required of the arbitrator by the agreement of the parties, and any other considerations as are likely to secure the appointment of an independent and impartial arbitrator.

## **29. Withholding Arbitration Award Under Act**

- (a) Where the arbitration is not administered by the Centre, payment of the applicable fees set out in the *Fee Schedule for Domestic Arbitration* shall be made at the same time as any application to the Centre for directions under section 52 of the Act.
- (b) Any application under section 52 will be determined by a Referee appointed by the Centre from the Centre's Panel. The Referee shall be compensated in accordance with the flat fee arrangements for Referees in the *Fee Schedule for Expedited Procedures for Domestic Commercial Arbitration*.
- (c) The procedure for an application for directions under section 52 will be set by the Referee subject to the timelines in the Act.

**30. Determination of Arbitral Tribunal Fees**

- (a) Where the arbitration is not administered by the Centre, payment of the applicable fees set out in the *Fee Schedule for Domestic Arbitration* shall be made at the same time as any application to the Centre for a summary determination of the amount of the fees and expenses payable to the arbitral tribunal under section 55 for directions under section 52 of the Act.
- (b) The summary determination will be determined by a Referee appointed by the Centre from the Centre's Panel. The Referee shall be compensated in accordance with the flat fee arrangements for Referees in the *Fee Schedule for Domestic Commercial Arbitration*.
- (c) The procedure for the summary determination will be set by the Referee appointed by the Centre subject to the timelines in the Act.

**PART D: OPTIONAL ARBITRATION APPEAL RULES**

**31. Bringing an Appeal**

- (a) A party to an arbitration may appeal to an Appeal Tribunal on any question of law arising out of an Award if:
  - (i) the arbitration agreement expressly provides that either party may appeal an Award to the Centre's Appeal Tribunal, or
  - (ii) all of the parties to the arbitration consent to an appeal to the Centre's Appeal Tribunal at any time after the arbitration commences.
- (b) Notwithstanding Rule 31(a), if the parties have agreed in an arbitration agreement that an appeal may be brought on questions of mixed law and fact or fact or on other specified grounds, the Appeal Tribunal shall hear the appeal on those specified grounds.
- (c) An appeal shall be brought by delivering a Notice of Appeal to the Centre and the other parties within 21 days of the date of any final or partial final Award along with the required appeal commencement fee as set out in the *Fee Schedule for Domestic Arbitration*.
- (d) The Notice of Appeal shall set out the grounds of appeal and shall include a copy of the Award which is the subject of the Notice of Appeal.
- (e) The parties may use the Notice of Appeal form included as Schedule "F" to these Rules.

**32. Effect of Appealed Award**

- (a) Upon the filing of a Notice of Appeal, the parties agree that the appealed Award shall not be considered final for purposes of:
  - (i) any Court application under the Act to set aside the appealed Award;

- (ii) any Court application under the Act to appeal on any questions of law arising out of the appealed Award; and
- (iii) any Court application under the Act or in any other jurisdiction to recognize or enforce the appealed Award.
- (b) The parties agree that the time period for bringing any Court application under Rule 32(a) shall be tolled until the final decision of the Appeal Tribunal.
- (c) The parties agree that they will stay any court proceedings to set aside, appeal or enforce the appealed Award that were already commenced as of the date of filing of the Notice of Appeal.
- (d) If the appeal under these Rules is withdrawn, the appealed Award shall be deemed final as of the date that the appeal is withdrawn.
- (e) The appeal process does not replace the correction, interpretation and additional arbitral award remedies under Section 56 of the Act. A party seeking only these remedies on appeal shall exercise any rights under Section 56 of the Act before the Arbitral Tribunal.
- (f) Unless the parties otherwise agree, by consenting to an appeal under this Part, the parties expressly agree that the parties may not appeal any question of law arising out of the appealed Award under the Act.
- (g) Unless the parties otherwise agree, by consenting to an appeal under this Part the parties expressly agree that the parties may not appeal any question of law arising out of the decision of the Appeal Tribunal on the appeal under the Act.
- (h) The parties agree that the procedures in Part D of these Rules shall be deemed to be a procedural order under section 32 of the Act.

### **33. Appointment of an Appeal Tribunal**

- (a) On the filing of a Notice of Appeal and payment of the appeal commencement fee, the Centre shall, within 5 days, deliver to each party a list of those members of the Centre's Panel who are available to hear an appeal.
- (b) Each of the parties to an appeal shall, within 5 days, advise the Centre in writing of any circumstances that exist that give rise to a justifiable doubt as to the independence or impartiality on the part of any of the members of the Centre's Panel from the list delivered under Rule 33(a).
- (c) Each of the parties to an appeal may, within 5 days, advise the Centre in writing of the order of preference for the appointment of members of the Appeal Tribunal from the list delivered under Rule 33(a).
- (d) If any party to an appeal fails to advise the Centre in writing within these time limits they shall be deemed to have accepted the eligibility of each member of the list sent under Rule 33(a).

- (e) The Centre shall within 10 days of the delivery of the list sent under Rule 33(a) appoint an Appeal Tribunal having due regard to any submission sent by any party. If the Centre determines that an insufficient number of members of the Centre's Panel are available for appointment the Centre may send a further list pursuant to Rule 33(a) and may include candidates other than members of the Centre's Panel.
- (f) The members of an Appeal Tribunal shall be paid the fee set out in the Centre's *Fee Schedule for Domestic Arbitration*.
- (g) The Appeal Tribunal may, from time to time, require each party to make deposits with the Centre in trust, or otherwise, in an equal amount as an advance for the anticipated Appeal Tribunal's fees.
- (h) If the required deposits are not made within 15 days after receipt of the request from the Appeal Tribunal, the Appeal Tribunal shall inform the parties in order that another party may make the required payment.
- (i) If the required deposits are not made, the Appeal Tribunal may order the suspension or termination of the proceeding.

**34. Procedure on an Appeal**

- (a) The Appeal Tribunal shall convene an initial procedural conference within 10 days of the appointment of the Appeal Tribunal to set a schedule for:
  - (i) the exchange of written arguments for the hearing of the appeal;
  - (ii) the hearing of the appeal; and
  - (iii) the payment of any deposits for the fees and disbursements of the Appeal Tribunal.
- (b) The hearing of the appeal will be conducted in accordance with the directions of the Appeal Tribunal.

**35. Powers of the Appeal Tribunal**

- (a) On an appeal, an Appeal Tribunal may confirm, vary, or otherwise amend the appealed Award.
- (b) The parties agree that a decision of the Appeal Tribunal on an appeal is an arbitral award for all purposes, including under the Act.
- (c) An Appeal Tribunal may dismiss an appeal without a hearing if:
  - (i) the parties to the arbitration consent in writing; or
  - (ii) the appellant has failed to comply with the directions of the Appeal Tribunal.
- (d) An Appeal Tribunal may make an award of costs and the parties agree that the Appeal Tribunal shall be governed by section 50 of the Act in making its award of costs.