

ANNEX 14A
RULES OF PROCEDURE

Definitions

1. For the purposes of this Annex:

adviser means a person retained by a Party to advise or assist the Party related with the arbitral tribunal proceeding;

arbitral tribunal means an arbitral tribunal established under Article 14.10 (Composition of the Arbitral Tribunal);

arbitrator means a member of an arbitral tribunal established under Article 14.10 (Composition of the Arbitral Tribunal);

assistant means a person who, under the terms of appointment by an arbitrator, conducts research or provides other professional assistance to that arbitrator;

complaining Party means a Party that requests the establishment of an arbitral tribunal under Article 14.8 (Request for the Establishment of an Arbitral Tribunal);

court reporter means a designated note-taker;

expert means a person or body from whom the arbitral tribunal seeks information and technical advice pursuant to Rules 28 to 30 (Role of Experts) of this Annex;

legal holiday means every Friday, Saturday and Sunday and any other day designated by a Party as an official holiday;

Party complained against means a Party that received the request for the establishment of an arbitral tribunal under Article 14.8 (Request for the Establishment of an Arbitral Tribunal);

proceedings means an arbitral tribunal proceeding; and

representative means an employee of a government department or agency or of any other government entity of a Party.

2. Any reference made in these rules of procedure to an Article is a reference to the appropriate Article in Chapter 14 (Dispute Settlement).

Administration of Proceedings

3. The Party in whose territory the proceedings take place shall be in charge of the logistical administration of dispute settlement proceedings, in particular the organization of hearings, unless the Parties agree otherwise.

Composition of Arbitral Tribunal

4. The date of the appointment of the arbitrator shall be considered as the date upon which the candidate submits its written acceptance to the Parties. If the candidate fails to communicate its acceptance to the Parties, within three days after the candidate was informed of its selection, such candidate shall be deemed not to accept the appointment.

Written Submissions and Other Documents

5. Each Party shall deliver the original and no less than four copies of any written submission to the arbitral tribunal and one copy to the Embassy of the other Party. Delivery of submissions and any other document related to the arbitral tribunal proceeding may be made by facsimile or other means of electronic transmission if the Parties so agree. Where a Party delivers physical copies of written submissions or any other document related to the arbitral tribunal proceeding, that Party shall deliver an electronic version of such submissions or other document at the same time.

6. The deadlines are counted from the following date of the receipt of such submission or documents. The complaining Party shall deliver a complete initial written submission to the Party complained against no later than 30 days after the date on which the last arbitrator is appointed. The Party complained against shall, in turn, deliver a written counter-submission no later than 30 days after the date of receipt of the initial written submission of the complaining Party.

7. The arbitral tribunal shall establish, in consultation with the Parties, dates for the delivery of the subsequent written rebuttal submissions of the Parties and any other written submission that the arbitral tribunal and the Parties agree are appropriate.

8. A Party may at any time correct minor errors of a clerical nature in any written submission or other document related to the arbitral tribunal proceeding by delivering a new document clearly indicating the changes.

9. If the last day for delivery of a document falls on a legal holiday observed by a Party or on any other day on which the government offices of that Party are closed by order of the government or by *force majeure*, the document may be delivered on the next business day.

Burden of Proof

10. A Party asserting that a measure of the other Party is inconsistent with its obligations under this Agreement, or that the other Party has otherwise failed to carry out its obligations under this Agreement, or that a benefit the Party could reasonably have expected to accrue to it is being nullified or impaired as a result of a measure that is not inconsistent with this Agreement, shall have the burden of proving its assertions.

11. A Party asserting that a measure is subject to an exception under this Agreement shall have the burden of proving that the exception applies.

Operation of Arbitral Tribunals

12. The chair of the arbitral tribunal shall preside at all of its meetings. An arbitral tribunal may delegate to the chair of the arbitral tribunal authority to make administrative decisions regarding the proceedings. Unless the Parties agree otherwise, the arbitral tribunal within seven days of its establishment shall contact the Parties in order to discuss administrative matters.

13. The arbitral tribunal may conduct its business by any appropriate means, including technological means such as telephone, facsimile transmission, and video or computer links.

14. Only arbitrators may take part in the deliberations of the arbitral tribunal. The arbitral tribunal may, in consultation with the Parties, employ such number of assistants, interpreters or translators, or court reporters as may be required for the proceeding and permit them to be present during such deliberations.

15. Where a procedural question arises that is not addressed by these rules, an arbitral tribunal may, in consultation with the Parties, adopt an appropriate procedure that is consistent with this Agreement.

16. The time period applicable to the arbitral tribunal proceedings shall be suspended for a period that begins on the date on which any member of the arbitral tribunal becomes unable to act and ends on the date on which the successor is appointed.

17. An arbitral tribunal may, upon mutual agreement between the Parties, modify any time period applicable in the proceedings and make other procedural or administrative adjustments as may be required in the proceedings. An arbitral tribunal, in consultation with the Parties, may, in light of unforeseen developments, modify a time period applicable in the arbitral tribunal proceedings and make other procedural or administrative adjustments required for the fairness or efficiency of the proceeding.

Removal of an Arbitrator

18. Where a Party considers that an arbitrator or the chair is not in compliance with the requirements of the Code of Conduct and for this reason must be replaced, that Party shall immediately notify the other Party. Upon receipt of such notice, the Parties shall consult and, if they so decide, shall replace the arbitrator or the chair and select a replacement.

19. If the Parties fail to decide on the need to replace an arbitrator within 10 days of receipt of a notice mentioned in Rule 18, either Party may request that the matter be referred to the chair of the arbitral tribunal, whose decision shall be final. The chair shall render a decision within 10 days of the request. If the chair decides that the arbitrator should be replaced, a replacement shall be selected using the procedure set out in Article 14.10(4).

20. If the Parties cannot reach a decision on the need to replace the chair within 10 days of receipt of a notice mentioned in Rule 18, a replacement shall be selected using the procedure set out in Article 14.10(5).

Hearings

21. The chair of the arbitral tribunal shall fix the date and time of the initial hearing and any subsequent hearings in consultation with the Parties and the arbitrators, and then notify the Parties of those dates and times in writing no later than 15 days prior to the hearings.

22. The arbitral tribunal may convene additional hearings if the Parties so agree.

23. All arbitrators shall be present during the entirety of any hearing.

24. No later than five days before the date of a hearing, each Party shall deliver to the other Party and the arbitral tribunal a list of the names of those persons who will be present at the hearing on behalf of that Party and of other representatives or advisers who will be attending the hearing.

25. Each hearing shall be conducted by the arbitral tribunal in a manner that ensures that the complaining Party and the Party complained against are afforded equal time for arguments, replies and counter-replies.

26. Hearings shall be open to the public, unless a Party requests otherwise. The hearings shall be held in closed session when the submissions and arguments of a Party contain confidential information. The arbitral tribunal may, in consultation with the Parties, adopt appropriate logistical arrangements and procedures to ensure that hearings are not disrupted by the attendance of the public.

27. The arbitral tribunal shall arrange the preparation of hearing transcripts, if any, and shall, as soon as possible after any such transcripts are prepared, deliver a copy to each Party.

Role of Experts

28. Upon request of a Party, or on its own initiative, the arbitral tribunal may seek information and technical advice from any person or body that it deems appropriate, relating to the factual or legal issues before it, subject to Rules 29 and 30 and such additional terms and conditions as the Parties may agree upon. The requirements set out in Article 14.7 (Qualification of Arbitrators) shall apply to the experts or bodies, as appropriate.

29. Before the arbitral tribunal seeks information or technical advice, it shall:

- (a) notify the Parties of its intention to seek information or technical advice pursuant to Rule 28 and the reasons for seeking it. In addition, the arbitral tribunal shall identify the expert from whom or which the information or technical advice is sought. The arbitral tribunal shall provide the Parties with an adequate period of time to submit comments; and

- (b) provide the Parties with a copy of any information or technical advice received pursuant to Rule 28 and provide them with an adequate period of time to submit comments.

30. When the arbitral tribunal takes into consideration the information or technical advice received pursuant to Rule 28 for the preparation of its report, it shall also take into consideration any comments or observations submitted by the disputing Parties with respect to such information or technical advice.

Questions in Writing

31. The arbitral tribunal may at any time during the proceedings address questions in writing to one or both Parties. The Parties shall receive a copy of any questions put forward by the arbitral tribunal.

32. Each Party shall also provide a copy of its written response to the arbitral tribunal's questions to the other Party. The Parties shall be given the opportunity to provide written comments on the reply of the other Party within seven days of the date of delivery.

Ex Parte Contacts

33. Neither Party may communicate with the arbitral tribunal without notifying the other Party. The arbitral tribunal shall not communicate with a Party in the absence of, or without notifying, the other Party.

34. No arbitrator may discuss any aspect of the substantive subject matter of the proceedings with the Parties in the absence of the other arbitrators.

Availability of Information

35. The Parties shall maintain the confidentiality of the arbitral tribunal's hearings, deliberations and initial report, and all written submissions to, and communications with, the arbitral tribunal, in accordance with the following procedures:

- (a) a Party may make available to the public at any time its own written submissions;

- (b) to the extent it considers necessary to protect personal privacy or legitimate commercial interests of particular enterprises, public or private, or to address essential confidentiality concerns, a Party may designate specific information included in its written submissions, or that it has presented in the arbitral tribunal hearing, for confidential treatment;
- (c) a Party shall treat as confidential any information submitted by the other Party to the arbitral tribunal that the latter Party has designated as confidential pursuant to subparagraph (b); and
- (d) each Party shall take such reasonable steps necessary to ensure that experts, interpreters, translators, court reporters and other individuals involved in the arbitral tribunal proceedings maintain the confidentiality of the arbitral tribunal proceedings.

Remuneration and Payment of Expenses

36. Unless the Parties otherwise agree, the expenses of the arbitral tribunal, the remuneration of the arbitrators and their assistants, their travel and lodging expenses, and all general expenses shall be borne in equal shares between the Parties.

37. Each arbitrator shall keep a record and render a final account of his or her time and expenses, and those of any assistant, and the arbitral tribunal shall keep a record and render a final account of all general expenses.

Language

38. All proceedings relating to the dispute settlement proceedings shall be conducted in the English language.

39. Any document submitted for use in any proceedings pursuant to this Chapter shall be in the English language. If any original document is not in the English language the Party submitting such document shall provide an English translation of that document.

Time Limits

40. All time limits laid down in this Chapter, including the limits for the arbitral tribunals to issue their rulings, shall be counted in calendar days, the first day being the day following the act or fact to which they refer.