

FIATA

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ORGANIZATION

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Arbitration Court Rules of FIATA

First Section: General Provisions

Art. 1 Applicability, Jurisdiction

Pursuant to Art. 11 of the FIATA Statutes dated October 26, 1999 regarding arbitration, recourse to the ordinary courts is waived for disputes between members and between members and FIATA.

Instead for those types of disputes, jurisdiction of an arbitration court is expressly provided for and the members of FIATA and FIATA itself are subject to this jurisdiction. Such an arbitration court has its domicile in Zurich/Switzerland. The proceedings may take place in another location provided the parties and the members of the arbitration court agree on this place. The proceedings shall be in accordance with Zurich civil procedure and therewith in accordance with the concordat regarding arbitration jurisdiction.

These Arbitration Rules regulate the proceedings provided there is no compulsory law to the contrary. Zurich civil procedure and therewith the concordat regarding jurisdiction are subsidiary.

Art. 2 Responsible Judicial Authority at the Domicile of the Arbitration Court

The Cantonal Supreme Court of the Canton of Zurich is the responsible judicial authority which

- a) appoints the arbitration judges if these are not designated by the parties or by an office authorized by them;
- b) decides on the rejection and recall of arbitration judges and provides for their replacement;
- c) extends the period of office of the arbitration judges;
- d) upon request of the arbitration court assists in the implementation of evidence measures;
- e) accepts the arbitration award for deposit and sends it to the parties;
- f) decides regarding nullity appeals and appeal requests;
- g) certifies the enforceability of the arbitration award.

Second Section: Arbitration Rules

Art. 3 Subject of the Arbitration Proceedings

The subject matter of an arbitration proceeding can be every claim which is subject to the free disposal of the parties provided no public court is exclusively responsible for the matter according to a compulsory legal provision.

Art. 4 Approval of Attorneys

Each provision of an arbitration clause which prohibits the participation of attorneys in arbitration proceedings as arbitration judge, secretary or party representation is null and void.

Art. 5 Competence of the Arbitration Court

In the event that the validity or contents and scope of these Arbitration Rules are disputed before the arbitration court, it shall consider its own competence in an interim or end decision.

The objection as to lack of jurisdiction must be raised before pleading the central issue.

Art. 6 Appeal

The interim decision in which the arbitration court finds itself having jurisdiction or not is subject to nullity appeals within the meaning of Article 27 letter b.

Third Section: Appointment of Arbitrators, Period of Office, Pendency

Art. 7 Arbitrators

The arbitration court consists of three members and is formed by arbitrators each one nominated by the parties and the Secretary General of FIATA as head arbitrator. The arbitrators nominated by the parties must be chosen from among the members of the Extended Board or the Advisory Body Legal Matters of FIATA.

Art. 8 Appointment by the President of FIATA

Should a party not appoint the arbitrator to be designated by it, the President of FIATA shall make the appointment upon request of a party.

Likewise, the President shall make the appointment of the head arbitrator should the Secretary General of FIATA not be available. He may appoint a member of the Extended Board or the Advisory Body Legal Matters or fall back upon an external attorney.

Art. 9 Pendency

The arbitration proceeding is pending from the time that a party initiates the procedures provided for in the arbitration clause for forming an arbitration court.

Art. 10 Acceptance of Office by the Arbitrator

The arbitrators must confirm the acceptance of office.

The arbitration court is first formed when all arbitrators have stated acceptance of the office for the dispute presented to them.

Art. 11 Period of Office

The parties can limit the office transferred to the arbitration court in the arbitration agreement or a later agreement.

In this case, the period of office may be extended in each case for a specific period by agreement of the parties, upon request of a party or the arbitration court, by decision of the judicial authority specified in Article 2.

Should a party make such a request, the opinion of the other must be heard.

Art. 12 Legal Delay

The parties may at any time appeal to the judicial authority specified in Article 2 due to legal delay.

Fourth Section: Rejection, Removal and Replacement of Arbitrators

Art. 13 Rejection of Arbitrator

The parties can reject arbitrators only for the following reasons:

- when the authorized person or attorney of a party is related directly or until the second level in the branch of the family or so related by marriage.
- when the arbitrator must decide a matter involving a legal entity in which he/she is a member;
- when a particular friendship or personal hostility or a particular obligatory or dependence relationship exists between him/her and a party;
- when facts exist which make him/her appear biased against the case to be judged;
- when the arbitrator is not capable of acting.

A party can reject an arbitrator appointed by it only for one of the reasons arising after appointment provided it substantiates that it had no knowledge of the rejection reason at that time.

Art. 14 Period

The withdrawal must be requested by the beginning of the proceedings or as soon as the petitioner has knowledge of the rejection reason.

Art. 15 Contesting

In the event of a dispute, the judicial authority specified in Article 2 shall decide on the withdrawal. The parties are allowed to present arguments.

Art. 16 Removal

Every arbitrator may be removed by written agreement of the parties. Upon request of a party, the judicial authority specified in Article 2 can remove an arbitrator from office for material reasons.

Art. 17 Replacement

Should an arbitrator die, must withdraw, is removed or resigns, he/she will be replaced according to the procedure which was followed for his/her appointment.

Should he/she not be able to be replaced in this manner, the new arbitrator shall be appointed by the judicial authority specified in Article 2 unless the arbitration agreement is applicable in this regard. Should the parties not be able to agree on this, the judicial authority specified in Article 2 shall decide after consultation with the arbitration court as to what extent the litigation actions in which the replaced arbitrator assisted shall continue to be applicable.

In the event the period of office for the arbitrator is limited, the running of this period shall not be impeded by the replacement by one or more arbitrators.

Fifth Section: Procedure before the Arbitration Court

Art. 18 Procedural Provisions

The procedures before the arbitration court shall be determined by agreement of the parties or in the absence of such, by decision of the arbitration court. In the event the procedures have neither been set by agreement of the parties nor by decision of the arbitration court, the Swiss Federal Law dated December 4, 1947 regarding federal civil procedure shall be analogously applicable.

Art. 19 Legal Hearing

The chosen procedures must in every case ensure the equality of rights of the parties and to allow each of them:

- a) to have a legal hearing and in particular, to plead their actual and legal means of attack and defense;
- b) to inspect the files at any time within the scope of ordinary course of business;
- c) to attend evidence and oral proceedings ordered by the arbitration court;
- d) to be represented or be assisted by an authorized person of its own choice.

Art. 20 Costs of the Arbitration Court

The costs of the arbitration court consist of:

- travel expenses from the residence of the arbitrator to the place of the proceedings (Business Class)
- hotel and food for the arbitrator at the place of the proceedings during the period of the proceedings including the night before and after
- CHF 5,000.-- as lump sum for the entire arbitration cost per proceedings date which requires the physical presence of the arbitration court

The arbitration court shall decide on the allocation of costs of the arbitration court to the parties.

Art. 21 Costs of the Parties

As compensation to the parties, the following may be asserted:

- travel expenses from the residence of the nominated party representative to the place to the proceedings (Business Class)
- hotel and food for the same person at the place of the proceedings during the period of the proceedings including the night before and after
- CHF 1000.-- per started travel and proceedings day

Per party, only the costs for one person nominated as party representative can be asserted.

The arbitration court shall decide on the allocation of party costs to the parties.

Art. 22 Cost Advance

The arbitration court may request an advance payment for the probable costs of the proceedings and make the carrying out of the proceedings dependent on making this payment.

In the event the party does not make the advance payment requested of it, the other party can at its choice advance the entire costs or waive the arbitration proceedings. Should it waive the

proceedings, the parties are then no longer bound by the arbitration agreement in regard to this disputed matter.

Sixth Section: Arbitration Award

Art. 23 Deliberations and Arbitration Award

All arbitrators shall participate in the deliberations and voting. The arbitration award is granted by a majority of the votes. The arbitration court shall decide in accordance with the rules of the applicable law unless the parties could have agreed that the decision can be judged based on fairness. The arbitration court may not award a party more or, without special legal provisions allowing it, other than what the party requested.

Art. 24 Contents of the Arbitration Award

The arbitration award shall contain:

- a) names of the arbitrators;
- b) designation of the parties;
- c) information as to the domicile of the arbitration court;
- d) motions of the parties or in the absence of motions, a description of the disputed question;
- e) inasmuch as the parties have not expressly waived it: presentation of the facts, the legal decision reasons and if necessary, fairness considerations;
- f) award form regarding the case itself;
- g) award form regarding the amount and allotment of the costs of the proceedings and party compensation.

The arbitration award must be dated and be signed by the arbitrators. Signature of the majority of the arbitrators is sufficient when it is noted in the arbitration award that the minority refused to sign.

Art. 25 Agreement of the Parties

Submission of an agreement of the parties ending the dispute shall be put in the form of an arbitration award by the arbitration court.

Art. 26 Deposit and Delivery

The arbitration court shall make sure that the arbitration award is deposited with the judicial authority specified in Article 2.

The arbitration award deposited in the original and in the case of paragraph 4, likewise in as many copies as the number of parties participating in the proceedings.

In the event that the arbitration award is not in an official language of the Swiss Confederation, the authority where it is deposited may request a certified translation.

This authority delivers the arbitration award to the parties and informs them of the date of deposit. The parties may waive deposit of the arbitration award. They can in addition waive that the arbitration award is delivered to them by the judicial authority; in this case delivery is made by the arbitration court.

Seventh Section: Nullity Appeals

Art. 27 Grounds

Nullity appeals may be made against the arbitration award to the judicial authority specified in Article 2 in order to assert:

- a) the arbitration court was not duly formed;
- b) the arbitration court declared itself incorrectly as having jurisdiction or not;
- c) it decided on disputed points which were not submitted to it or it left legal demands undecided;
- d) a compulsory procedural provision within the scope of Article 19 was breached;
- e) the arbitration court awarded a party more or, without that special legal provisions allowed it, other than that requested by it;
- f) the arbitration award is arbitrary because it is based on actual determinations obviously contrary to the file or because it contains an obvious breach of law or fairness;
- g) the arbitration court decided after expiry of the period of office ;
- h) the provisions of Article 24 were disregarded or the award form is not understandable or contradictory;
- i) the compensation of the arbitrators set by the arbitration court are obviously too high.

Art. 28 Time Period

The nullity appeal must be submitted within 30 days after delivery of the arbitration award.

Art. 29 Suspensive Effect

The nullity appeal does not have any suspensive effect. The judicial authority specified in Article 2 may, however, grant this effect upon the request of a party.

Art. 30 Return to Arbitration Court

The judicial authority handling the nullity appeal may after hearing the parties and when it considers it appropriate, send the arbitration award back to the arbitration court and give it a time period in which to adjust or supplement it.

Eighth Section: Enforcement of Arbitration Award

Art. 31 Enforcement Certification

Upon request of a party, the judicial authority specified in Article 2 shall certify that an arbitration award which does not contradict Article 3 has the same enforceable effect as a court decision provided:

- a) the parties have expressly acknowledged it;
- b) or no nullity appeal has been submitted within the time period in Article 28 paragraph 1; c) or no suspensive effect has been granted in a timely submitted nullity appeal;
- d) or an asserted nullity appeal has lapsed or been dismissed.

The enforcement certification shall be affixed at the end of the arbitration award. The temporary enforcement of an arbitration award is precluded.

Zurich - May 2000

Martin Oeschger
Secretary General