

Dispute Board Rules

in force as from 1 September 2004

with

- ♦ *Standard ICC Dispute Board Clauses*
- ♦ *Model Dispute Board Member Agreement*

International Chamber of Commerce

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Of the various languages in which the ICC Dispute Board Rules may be published, the English and French versions are the only official texts.

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FOREWORD

ICC has always aimed to provide the international business community with dispute resolution services adapted to its various needs. These include arbitration, ADR, expertise and, most recently, a service for establishing and using Dispute Boards. Each of these services has its own characteristics and utility. It is up to the parties to determine which of them – or which combination of them – is best suited to their particular needs.

Arbitration is the only one which results in an award by a tribunal that is enforceable at law. Determinations made by Dispute Boards are not enforceable at law as such, although they may become contractually binding on the parties as described below. Hence, Dispute Board members do not act as arbitrators.

ADR is primarily intended to help parties arrive at a settlement agreement in relation to a particular dispute. Unlike Dispute Boards, which are standing bodies set up to deal with disputes as they arise, ADR is designed to deal with disputes on a one-off basis. ADR proceedings are administered by ICC under its ADR Rules.

The purpose of expertise proceedings is to provide parties with an expert's report on a particular issue. These proceedings are administered by ICC pursuant to its Rules for Expertise.

WHAT ARE DISPUTE BOARDS?

Dispute Boards (DBs) are normally set up at the outset of a contract and remain in place and are remunerated throughout its duration. Comprising one or three members thoroughly acquainted with the contract and its performance, the DB informally assists the parties, if they so desire, in resolving disagreements arising in the course of the contract and it makes recommendations or decisions regarding disputes referred to it by any of the parties. DBs have become a standard dispute resolution mechanism for contractual disputes arising in the course of mid- or long-term contracts.

ICC DISPUTE BOARD DOCUMENTS

ICC offers the international businesses community a set of documents providing a comprehensive and flexible

framework for establishing and operating DBs in a wide range of contracts in different industries. These documents comprise the ICC Dispute Board Rules, the ICC Model Dispute Board Member Agreement and the Standard ICC Dispute Board Clauses.

The Rules are designed to govern the Dispute Board proceedings.

The Dispute Board Member Agreement covers such matters as the DB member's undertaking, the remuneration to be paid to the DB member and the duration of the agreement. The parties and the DB members are, of course, free to add to or modify the model as they may all agree. They should verify the enforceability of the agreement under applicable law and should also ensure compliance with any requirements necessary for the enforceability of the agreement.

The Standard ICC Dispute Board Clauses consist of three alternatives, each providing for a different type of Dispute Board, followed by arbitration as the ultimate recourse if a dispute is not resolved through the Dispute Board. The parties may choose whichever kind of Dispute Board is most appropriate, given the nature of their contract and their relationship. ICC does not favour any one type of DB over the others. When incorporating one of the clauses in their contract, parties are advised to verify its enforceability under applicable law.

TYPES OF DISPUTE BOARDS

The three alternative types of Dispute Board available to parties under the ICC DB Rules are as follows:

- **Dispute Review Board ('DRB')**

The DRB issues 'Recommendations' with respect to any dispute referred to it and constitutes a relatively consensual approach to dispute resolution. If no party expresses dissatisfaction with a Recommendation within a stated time period, the parties contractually agree to comply with the Recommendation. If a party does express dissatisfaction with the Recommendation within such time period, that party may submit the entire dispute to arbitration, if the parties have so agreed, or the courts. Pending a ruling by the arbitral tribunal or the court, the parties may voluntarily comply with the Recommendation but are not bound to do so.

- **Dispute Adjudication Board ('DAB')**

The DAB issues 'Decisions' with respect to any dispute referred to it and constitutes a less consensual approach to dispute resolution. By contractual agreement, the parties must comply with a Decision without delay as soon as they receive it. If a party expresses dissatisfaction with a Decision within a stated time period, it may submit the dispute to final resolution by arbitration, if the parties have so agreed, or the courts, but the parties meanwhile remain contractually bound to comply with the Decision unless and until the arbitral tribunal or court rules otherwise. If no party expresses dissatisfaction with a Decision within the stated time period, the parties contractually agree to remain bound by it.

- **Combined Dispute Board ('CDB')**

The CDB normally issues Recommendations with respect to any dispute referred to it but may issue a Decision if a party so requests and no other party objects. In the event of an objection, the CDB will decide whether to issue a Recommendation or a Decision on the basis of the criteria set forth in the Rules. The CDB thus offers an intermediate approach between the DRB and the DAB.

The essential difference between a Decision and a Recommendation is that the parties are required to comply with the former without delay as soon as they receive it, whereas a Recommendation must be complied with only if no party expresses dissatisfaction within a stated time limit. In either case, if a party is dissatisfied with a DB's determination of a given dispute, it may refer the dispute to arbitration, if the parties have so agreed, or the courts, in order to obtain an enforceable award or judgement. The DB's determination is admissible in any such further proceedings.

ICC DISPUTE BOARD CENTRE

Under the ICC DB Rules, ICC does not administer Dispute Board proceedings, but plays a subsidiary role that may cover appointing DB Members and reviewing DB decisions as to form at the parties' request. These functions are performed by the ICC Dispute Board Centre, which is separate from the ICC International Court of Arbitration, the ICC International Centre for Expertise and the ICC ADR Secretariat.

STANDARD ICC DISPUTE BOARD CLAUSES

ICC offers parties three different kinds of Dispute Board under its Dispute Board Rules. Parties should select the clause that corresponds to the type of Dispute Board they wish to use. ICC does not favour any one of these three types of Dispute Board over the others.

While ICC recommends the use of the standard clauses, the parties should verify their enforceability under applicable law.

ICC DISPUTE REVIEW BOARD FOLLOWED BY ICC ARBITRATION IF REQUIRED

The Parties hereby agree to establish a Dispute Review Board ('DRB') in accordance with the Dispute Board Rules of the International Chamber of Commerce (the 'Rules'), which are incorporated herein by reference. The DRB shall have [one/three] member[s] appointed in this Contract or appointed pursuant to the Rules.

All disputes arising out of or in connection with the present Contract shall be submitted, in the first instance, to the DRB in accordance with the Rules. For any given dispute, the DRB shall issue a Recommendation in accordance with the Rules.

If any Party fails to comply with a Recommendation when required to do so pursuant to the Rules, the other Party may refer the failure itself to arbitration under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules of Arbitration.

If any Party sends a written notice to the other Party and the DRB expressing its dissatisfaction with a Recommendation, as provided in the Rules, or if the DRB does not issue the Recommendation within the time limit provided in the Rules, or if the DRB is disbanded pursuant to the Rules, the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules of Arbitration.

**ICC DISPUTE ADJUDICATION BOARD
FOLLOWED BY ICC ARBITRATION IF REQUIRED**

The Parties hereby agree to establish a Dispute Adjudication Board ('DAB') in accordance with the Dispute Board Rules of the International Chamber of Commerce (the 'Rules'), which are incorporated herein by reference. The DAB shall have [one/three] member[s] appointed in this Contract or appointed pursuant to the Rules.

All disputes arising out of or in connection with the present Contract shall be submitted, in the first instance, to the DAB in accordance with the Rules. For any given dispute, the DAB shall issue a Decision in accordance with the Rules. *

If any Party fails to comply with a Decision when required to do so pursuant to the Rules, the other Party may refer the failure itself to arbitration under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules of Arbitration.

If any Party sends a written notice to the other Party and the DAB expressing its dissatisfaction with a Decision, as provided in the Rules, or if the DAB does not issue the Decision within the time limit provided for in the Rules, or if the DAB is disbanded pursuant to the Rules, the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules of Arbitration.

[Parties may, if they wish, provide for review by ICC of a DAB's Decisions by inserting the following text in place of the asterisk above: The DAB shall submit each Decision to ICC for review in accordance with Article 21 of the Rules.]*

**ICC COMBINED DISPUTE BOARD FOLLOWED
BY ICC ARBITRATION IF REQUIRED**

The Parties hereby agree to establish a Combined Dispute Board ('CDB') in accordance with the Dispute Board Rules of the International Chamber of Commerce (the 'Rules'), which are incorporated herein by reference. The CDB

Standard ICC Dispute Board Clauses

shall have [one/three] member[s] appointed in this Contract or appointed pursuant to the Rules.

All disputes arising out of or in connection with the present Contract shall be submitted, in the first instance, to the CDB in accordance with the Rules. For any given dispute, the CDB shall issue a Recommendation unless the Parties agree that it shall render a Decision or it decides to do so upon the request of a Party and in accordance with the Rules. *

If any Party fails to comply with a Recommendation or a Decision when required to do so pursuant to the Rules, the other Party may refer the failure itself to arbitration under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules of Arbitration.

If any Party sends a written notice to the other Party and the CDB expressing its dissatisfaction with a Recommendation or a Decision as provided for in the Rules, or if the CDB does not issue the Recommendation or Decision within the time limit provided for in the Rules, or if the CDB is disbanded pursuant to the Rules, the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules of Arbitration.

*[*Parties may, if they wish, provide for review by ICC of a CDB's Decisions by inserting the following text in place of the asterisk above: The CDB shall submit each Decision to ICC for review in accordance with Article 21 of the Rules.]*

DISPUTE BOARD RULES OF THE INTERNATIONAL CHAMBER OF COMMERCE

INTRODUCTORY PROVISIONS

Article 1 Scope of the Rules

Dispute Boards established in accordance with the Dispute Board Rules of the International Chamber of Commerce (the ‘Rules’) aid the Parties in resolving their business disagreements and disputes. They may provide informal assistance or issue Determinations. Dispute Boards are not arbitral tribunals and their Determinations are not enforceable like arbitral awards. Rather, the Parties contractually agree to be bound by the Determinations under certain specific conditions set forth herein. In application of the Rules, the International Chamber of Commerce (‘ICC’), through the ICC Dispute Board Centre (‘the Centre’), can provide administrative services to the Parties, which include appointing Dispute Board Members, deciding upon challenges to Dispute Board Members, and reviewing Decisions.

Article 2 Definitions

In the Rules:

- (i) ‘Contract’ means the agreement of the Parties that contains or is subject to provisions for establishing a Dispute Board under the Rules.
- (ii) ‘Determination’ means either a Recommendation or a Decision, issued in writing by the Dispute Board, as described in the Rules.
- (iii) ‘Dispute’ means any disagreement arising out of or in connection with the Contract which is referred to a Dispute Board for a Determination under the terms of the Contract and pursuant to the Rules.
- (iv) ‘Dispute Board (‘DB’)’ means a Dispute Review Board (‘DRB’), a Dispute Adjudication Board (‘DAB’) or a Combined Dispute Board (‘CDB’), composed of one or three Dispute Board members (‘DB Members’).

- (v) 'Party' means a party to the Contract and includes one or more parties, as appropriate.

Article 3

Agreement to Submit to the Rules

Unless otherwise agreed, the Parties shall establish the DB at the time of entering into the Contract. The Parties shall specify whether the DB shall be a DRB, a DAB or a CDB.

TYPES OF DISPUTE BOARDS

Article 4

Dispute Review Boards (DRBs)

1

DRBs issue Recommendations with respect to Disputes.

2

Upon receipt of a Recommendation, the Parties may comply with it voluntarily but are not required to do so.

3

If no Party has sent a written notice to the other Party and the DRB expressing its dissatisfaction with a Recommendation within 30 days of receiving it, the Recommendation shall become binding on the Parties. The Parties shall thereafter comply with such Recommendation without delay, and they agree not to contest it insofar as such agreement can validly be made.

4

If any Party fails to comply with a Recommendation when required to do so pursuant to this Article 4, the other Party may refer the failure itself to arbitration, if the Parties have so agreed, or, if not, to any court of competent jurisdiction.

5

Any Party that is dissatisfied with a Recommendation shall, within 30 days of receiving it, send a written notice expressing its dissatisfaction to the other Party and the

DRB. For information purposes, such notice may specify the reasons for such Party's dissatisfaction.

6

If any Party submits such a written notice expressing its dissatisfaction with a Recommendation, or if the DRB does not issue its Recommendation within the time limit prescribed in Article 20, or if the DRB is disbanded pursuant to the Rules before a Recommendation regarding a Dispute has been issued, the Dispute in question shall be finally settled by arbitration, if the parties have so agreed, or, if not, by any court of competent jurisdiction.

Article 5

Dispute Adjudication Boards (DABs)

1

DABs issue Decisions with respect to Disputes.

2

A Decision is binding on the Parties upon its receipt. The Parties shall comply with it without delay, notwithstanding any expression of dissatisfaction pursuant to this Article 5.

3

If no Party has sent a written notice to the other Party and the DAB expressing its dissatisfaction with the Decision within 30 days of receiving it, the Decision shall remain binding on the Parties. The Parties shall continue to comply with the Decision, and they agree not to contest it insofar as such agreement can validly be made.

4

If any Party fails to comply with a Decision when required to do so pursuant to this Article 5, the other Party may refer the failure itself to arbitration, if the Parties have so agreed, or, if not, to any court of competent jurisdiction.

5

Any Party that is dissatisfied with a Decision shall, within 30 days of receiving it, send a written notice expressing its dissatisfaction to the other Party and the DAB. For information purposes, such notice may specify the reasons for such Party's dissatisfaction.

6

If any Party submits such a written notice expressing its dissatisfaction with a Decision, or if the DAB does not issue its Decision within the time limit prescribed in Article 20, or if the DAB is disbanded pursuant to the Rules before a Decision regarding a Dispute has been issued, the Dispute in question shall be finally settled by arbitration, if the Parties have so agreed, or, if not, by any court of competent jurisdiction. Until the Dispute is finally settled by arbitration or otherwise, or unless the arbitral tribunal or the court decides otherwise, the Parties remain bound to comply with the Decision.

Article 6

Combined Dispute Boards (CDBs)

1

CDBs issue Recommendations with respect to Disputes, pursuant to Article 4, but they may issue Decisions, pursuant to Article 5, as provided in paragraphs 2 and 3 of this Article 6.

2

If any Party requests a Decision with respect to a given Dispute and no other Party objects thereto, the CDB shall issue a Decision.

3

If any Party requests a Decision and another Party objects thereto, the CDB shall make a final decision as to whether it will issue a Recommendation or a Decision. In so deciding, the CDB shall consider, without being limited to, the following factors:

- whether, due to the urgency of the situation or other relevant considerations, a Decision would facilitate the performance of the Contract or prevent substantial loss or harm to any Party;
- whether a Decision would prevent disruption of the Contract; and
- whether a Decision is necessary to preserve evidence.

4

Any request for a Decision by the Party referring a Dispute to the CDB shall be made in the Statement of Case under Article 17. Any such request by another Party should be made in writing no later than in its Response under Article 18.

ESTABLISHMENT OF THE DISPUTE BOARD

Article 7

Appointment of the DB Members

1

The DB shall be established in accordance with the provisions of the Contract or, where the Contract is silent, in accordance with the Rules.

2

Where the Parties have agreed to establish a DB in accordance with the Rules but have not agreed on the number of DB Members, the DB shall be composed of three members.

3

Where the Parties have agreed that the DB shall have a sole DB Member, they shall jointly appoint the sole DB Member. If the Parties fail to appoint the sole DB Member within 30 days after signing the Contract or within 30 days after the commencement of any performance under the Contract, whichever occurs earlier, or within any other time period agreed upon by the Parties, the sole DB Member shall be appointed by the Centre upon the request of any Party.

4

When the DB is composed of three DB Members, the Parties shall jointly appoint the first two DB Members. If the Parties fail to appoint one or both DB Members within 30 days after signing the Contract or within 30 days after the commencement of any performance

under the Contract, whichever occurs earlier, or within any other time period agreed upon by the Parties, both DB Members shall be appointed by the Centre upon the request of any Party.

5

The third DB Member shall be proposed to the Parties by the two DB Members within 30 days following the appointment of the second DB Member. If the Parties do not appoint the proposed third DB Member within 15 days from their receipt of the proposal, or if the two DB Members fail to propose the third DB Member, the third DB Member shall be appointed by the Centre upon the request of any Party. The third DB Member shall act as chairman of the DB unless all DB Members agree upon another chairman with the consent of the Parties.

6

When a DB Member has to be replaced due to death, resignation or termination, the new DB Member shall be appointed in the same manner as the DB Member being replaced, unless otherwise agreed by the Parties. All actions taken by the DB prior to the replacement of a DB Member shall remain valid. When the DB is composed of three DB Members and one of the DB Members is to be replaced, the other two shall continue to be DB Members. Prior to the replacement of the DB Member, the two remaining DB Members shall not hold hearings or issue Determinations without the agreement of all of the Parties.

7

The appointment of any DB Member shall be made by the Centre upon the request of any Party in the event that the Centre is satisfied that there is a sufficient basis for doing so.

8

When appointing a DB Member, the Centre shall consider the prospective DB Member's qualifications relevant to the circumstances, availability, nationality and relevant language skills, as well as any observations, comments or requests made by the Parties.

OBLIGATIONS OF THE DISPUTE BOARD MEMBERS

Article 8 **Independence**

1

Every DB Member must be and remain independent of the Parties.

2

Every prospective DB Member shall sign a statement of independence and disclose in writing to the Parties, to the other DB Members, and to the Centre, if such DB Member is to be appointed by the Centre, any facts or circumstances which might be of such a nature as to call into question the DB Member's independence in the eyes of the Parties.

3

A DB Member shall immediately disclose in writing to the Parties and the other DB Members any facts or circumstances of a similar nature which may arise in the course of such DB Member's tenure.

4

Should any Party wish to challenge a DB Member on the basis of an alleged lack of independence or otherwise, it may, within 15 days of learning of the facts upon which the challenge is based, submit to the Centre a request for a decision upon the challenge including a written statement of such facts. The Centre will finally decide the challenge after having given the challenged DB Member as well as any other DB Members and the other Party an opportunity to comment on the challenge.

5

If a DB Member is successfully challenged, that DB Member's Agreement with the Parties shall be terminated forthwith. The resulting vacancy shall be filled following the procedure used to appoint the challenged DB Member, unless otherwise agreed by the Parties.

Article 9

Work of the DB and Confidentiality

1

By accepting to serve, DB Members undertake to carry out their responsibilities in accordance with the Rules.

2

Unless otherwise agreed by the Parties or otherwise required by applicable law, any information obtained by a DB Member during the course of the DB's activities shall be used by the DB Member only for the purposes of the DB's activities and shall be treated by the DB Member as confidential.

3

Unless otherwise agreed by the Parties, a DB Member shall not act in any judicial, arbitration or similar proceedings relating to any Dispute, whether as a judge, as an arbitrator, as an expert, or as a representative or advisor of a Party.

Article 10

DB Member Agreement

1

Before commencing DB activities, every DB Member shall sign with all of the Parties a DB Member Agreement. If there are three DB Members, each DB Member Agreement shall have substantive terms that are identical to the other DB Member Agreements, unless otherwise agreed by the Parties and the DB Member concerned.

2

The Parties may at any time, without cause and with immediate effect, jointly terminate the DB Member Agreement of any DB Member but shall pay the Monthly Retainer Fee to such DB Member for a minimum of three months following the termination, unless otherwise agreed by the Parties and the DB Member concerned.

3

Every DB Member may terminate the DB Member Agreement at any time by giving a minimum of three

months' written notice to the Parties, unless otherwise agreed by the Parties and the DB Member concerned.

OBLIGATION TO COOPERATE

Article 11 **Providing of Information**

1

The Parties shall fully cooperate with the DB and communicate information to it in a timely manner. In particular, the Parties and the DB shall cooperate to ensure that, as soon as possible after the DB is constituted, the DB becomes fully informed about the Contract and its performance by the Parties.

2

The Parties shall ensure that the DB is kept informed of the performance of the Contract and of any disagreements arising in the course thereof by such means as progress reports, meetings and, if relevant to the Contract, site visits.

3

The DB shall, after consultation with the Parties, inform the Parties in writing of the nature, format and frequency of any progress reports that the Parties shall send to the DB.

4

If requested by the DB, the Parties, during meetings and site visits, shall provide the DB with adequate working space, accommodation, means of communication, typing facilities and all necessary office and information technology equipment allowing the DB to fulfil its functions.

Article 12 **Meetings and Site Visits**

1

At the beginning of its activities the DB shall, in consultation with the Parties, establish a schedule of meetings and, if relevant to the Contract, site visits. The

frequency of scheduled meetings and site visits shall be sufficient to keep the DB informed of the performance of the Contract and of any disagreements. Unless otherwise agreed by the Parties and the DB, when site visits are relevant to the Contract, there shall be a minimum of three such visits per year. The Parties and the DB shall attend all such meetings and site visits. In the event that a Party fails to attend, the DB may nevertheless decide to proceed. In the event that a DB Member fails to attend, the DB may proceed if the Parties so agree or if the DB so decides.

2

Site visits occur at the site or sites where the Contract is being performed. Meetings can be held at any location agreed by the Parties and the DB. If they do not agree on where to hold a meeting, the location shall be decided by the DB after consultation with the Parties.

3

During scheduled meetings and site visits the DB shall review the performance of the Contract with the Parties and may provide informal assistance, pursuant to Article 16, with respect to any disagreements.

4

Any Party may request an urgent meeting or site visit outside the scheduled meetings and site visits. The DB Members shall accommodate such a request at the earliest possible time and shall make best efforts to make themselves available for such urgent meetings or site visits within 30 days of the request.

5

After every meeting and site visit, the DB shall prepare a written summary of such meeting or site visit including a list of those present.

Article 13

Written Notifications or Communications; Time Limits

1

All written notifications or communications, including any enclosures or attachments, from a Party to the DB or

from the DB to the Parties shall be communicated simultaneously to all Parties and DB Members at the address on record for each DB Member and Party.

2

Written notifications or communications shall be sent in the manner agreed between the Parties and the DB or in any manner that provides the sender with proof of the sending thereof.

3

A notification or communication shall be deemed to have been made on the date that it was received by the intended recipient or by its representative or would have been received if made in accordance with this Article 13.

4

Periods of time specified in or fixed under the Rules shall start to run on the day following the date a notification or communication is deemed to have been made in accordance with the preceding paragraph. When the day next following such date is an official holiday or non-business day in the country in which the notification or communication is deemed to have been made, the period of time shall commence on the first following business day. Official holidays or non-business days are included in the calculation of the period of time. If the last day of the relevant period of the time granted is an official holiday or non-business day in the country where the notification or communication is deemed to have been made, the period of time shall expire at the end of the first following business day.

OPERATION OF THE DISPUTE BOARD

Article 14

Beginning and End of the DB's Activities

1

The DB shall begin its activities after every DB Member and the Parties have signed the DB Member Agreement(s).

2

Unless otherwise agreed by the Parties, the DB shall end its activities upon receiving notice from the Parties of their joint decision to disband the DB.

3

Any dispute which may arise after the DB has been disbanded shall be finally settled by arbitration, if the Parties have so agreed, or, if not, by any court of competent jurisdiction.

Article 15

Powers of the DB

1

The proceedings before the DB shall be governed by the Rules and, where the Rules are silent, by any rules which the Parties or, failing them, the DB may settle on. In particular, in the absence of an agreement of the Parties with respect thereto, the DB shall have the power, *inter alia*, to:

- determine the language or languages of the proceedings before the DB, due regard being given to all relevant circumstances, including the language of the Contract;
- require the Parties to produce any documents that the DB deems necessary in order to issue a Determination;
- call meetings, site visits and hearings;
- decide on all procedural matters arising during any meeting, site visit or hearing;
- question the Parties, their representatives and any witnesses they may call, in the sequence it chooses;
- issue a Determination even if a Party fails to comply with a request of the DB;
- take any measures necessary for it to fulfil its function as a DB.

2

Decisions of the DB regarding the rules governing the proceedings shall be taken by the sole DB Member or, when there are three DB Members, by majority vote. If there is no majority, the Decision shall be made by the chairman of the DB alone.

3

The DB may take measures for protecting trade secrets and confidential information.

4

If the Contract has more than two Parties, the application of the Rules may be adapted, as appropriate, to apply to the multiparty situation, by agreement of all of the Parties or, failing such agreement, by the DB.

PROCEDURES BEFORE THE DISPUTE BOARD

Article 16

Informal Assistance with Disagreements

1

On its own initiative or upon the request of any Party and in either case with the agreement of all of the Parties, the DB may informally assist the Parties in resolving any disagreements that may arise during the performance of the Contract. Such informal assistance may occur during any meeting or site visit. A Party proposing the informal assistance of the DB shall endeavour to inform the DB and the other Party thereof well in advance of the meeting or site visit during which such informal assistance would occur.

2

The informal assistance of the DB may take the form of a conversation among the DB and the Parties; separate meetings between the DB and any Party with the prior agreement of the Parties; informal views given by the DB to the Parties; a written note from the DB to the Parties; or any other form of assistance which may help the Parties resolve the disagreement.

3

The DB, if called upon to make a Determination concerning a disagreement with respect to which it has provided informal assistance, shall not be bound by any views, either oral or in writing, which it may have given in the course of its informal assistance.

Article 17

Formal Referral of Disputes for a Determination; Statement of Case

1

Any Party shall refer a Dispute to the DB by submitting a written statement of its case (the 'Statement of Case') to the other Party and the DB. The Statement of Case shall include:

- a clear and concise description of the nature and circumstances of the Dispute;
- a list of the issues submitted to the DB for a Determination and a presentation of the referring Party's position thereon;
- any support for the referring Party's position such as documents, drawings, schedules and correspondence;
- a statement of what the referring Party requests the DB to determine; and
- in the case of a CDB, if the referring Party wishes the CDB to issue a Decision, its request for a Decision and the reasons why it believes that the CDB should issue a Decision rather than a Recommendation.

2

The date on which the Statement of Case is received by the sole DB Member or the chairman of the DB, as the case may be, shall, for all purposes, be deemed to be the date of the commencement of the referral (the 'Date of Commencement').

3

The Parties remain free to settle the Dispute, with or without the assistance of the DB, at any time.

Article 18

Response and Additional Documentation

1

Unless the Parties agree otherwise or the DB orders otherwise, the responding Party shall respond to the Statement of Case in writing (the 'Response') within

30 days of receiving the Statement of Case. The Response shall include:

- a clear and concise presentation of the responding Party's position with respect to the Dispute;
- any support for its position such as documents, drawings, schedules and correspondence;
- a statement of what the responding Party requests the DB to determine;
- in the case of a CDB, a response to any request for a Decision made by the referring Party, or if the referring Party has not made such a request, any request for a Decision by the responding Party, including the reasons why it believes that the CDB should issue the type of Determination it desires.

2

The DB may at any time request a Party to submit additional written statements or documentation to assist the DB in preparing its Determination. Each such request shall be communicated in writing by the DB to the Parties.

Article 19

Organization and Conduct of Hearings

1

A hearing regarding a Dispute shall be held unless the Parties and the DB agree otherwise.

2

Unless the DB orders otherwise, hearings shall be held within 15 days of the date on which the sole DB Member or the chairman of the DB, as the case may be, receives the Response.

3

Hearings shall be held in the presence of all DB Members unless the DB decides, in the circumstances and after consultation with the Parties, that it is appropriate to hold the hearing in the absence of a DB Member; provided,

however, that prior to the replacement of a DB member a hearing may be held with the two remaining DB members only with the agreement of all of the Parties pursuant to Article 7(6).

4

If any of the Parties refuses or fails to take part in the DB procedure or any stage thereof, the DB shall proceed notwithstanding such refusal or failure.

5

The DB shall be in full charge of the hearings.

6

The DB shall act fairly and impartially and ensure that each Party has a reasonable opportunity to present its case.

7

The Parties shall appear in person or through duly authorized representatives who are in charge of the performance of the Contract. In addition, they may be assisted by advisors.

8

Unless the DB decides otherwise, the hearing shall proceed as follows:

- presentation of the case, first by the referring Party and then by the responding Party;
- identification by the DB to the Parties of any matters that need further clarification;
- clarification by the Parties concerning the matters identified by the DB;
- responses by each Party to clarifications made by the other Party, to the extent that new issues have been raised in such clarifications.

9

The DB may request the Parties to provide written summaries of their presentations.

10

The DB may deliberate at any location it considers appropriate before issuing its Determination.

DETERMINATIONS OF THE DISPUTE BOARD

Article 20

Time Limit for Rendering a Determination

1

The DB shall issue its Determination promptly and, in any event, within 90 days of the Date of Commencement as defined in Article 17(2). However, the Parties may agree to extend the time limit. In deciding whether to do so, the Parties shall consult with the DB and shall take into account the nature and complexity of the Dispute and other relevant circumstances.

2

When the Parties have agreed to submit Decisions to ICC for review, the time limit for issuing a Decision shall be extended by the time required for the Centre to review the Decision. The Centre shall complete its review within 30 days of its receipt of the Decision or of the payment of the administrative fee referred to in Article 3 of the Appendix, whichever occurs later. However, if additional time for such review is required, the Centre shall notify the DB and the Parties thereof in writing before the expiration of the 30 days, specifying the new date by which the Centre's review shall be completed.

Article 21

Review of Decisions by the Centre

Where the Parties have provided for review by ICC of the Decisions of a DAB or CDB, the DB shall submit the Decision in draft form to the Centre before it is signed. Each Decision must be accompanied by the registration fee referred to in Article 3 of the Appendix. The Centre may lay down modifications only as to the form of the Decision. No such Decision shall be signed by the DB Members or communicated to the Parties prior to the Centre's approval of such Decision.

Article 22

Contents of a Determination

Determinations shall indicate the date on which they are issued and shall state the findings of the DB as well as the

reasons upon which they are based. Determinations may also include, without limitation and not necessarily in the following order:

- a summary of the Dispute, the respective positions of the Parties and the Determination requested;
- a summary of the relevant provisions of the Contract;
- a chronology of relevant events;
- a summary of the procedure followed by the DB; and
- a listing of the submissions and documents provided by the Parties in the course of the procedure.

Article 23

Making of the Determination

When the DB is composed of three DB Members, the DB shall make every effort to achieve unanimity. If this cannot be achieved, a Determination is given by a majority decision. If there is no majority, the Determination shall be made by the chairman of the DB alone. Any DB Member who disagrees with the Determination shall give the reasons for such disagreement in a separate written report that shall not form part of the Determination but shall be communicated to the Parties. Any failure of a DB Member to give such reasons shall not prevent the issuance or the effectiveness of the Determination.

Article 24

Correction and Interpretation of Determinations

1
On its own initiative, the DB may correct a clerical, computational or typographical error, or any errors of a similar nature, contained in a Determination, provided such correction is submitted to the Parties within 30 days of the date of such Determination.

2
Any Party may apply to the DB for the correction of an error of the kind referred to in Article 24(1), or for the interpretation of a Determination. Such application must be made to the DB within 30 days of the receipt of the Determination by such Party. After receipt of the application by the sole DB Member or the chairman of

the DB, as the case may be, the DB shall grant the other Party a short time limit from the receipt of the application by that Party, to submit any comments thereon. Any correction or interpretation of the DB shall be issued within 30 days following the expiration of the time limit for the receipt of any comments from the other Party. However, the Parties may agree to extend the time limit for the issuance of any correction or interpretation.

3

Should the DB issue a correction or interpretation of the Determination, all time limits associated with the Determination shall recommence to run upon receipt by the Parties of the correction or interpretation of the Determination.

Article 25

Admissibility of Determinations in Subsequent Proceedings

Unless otherwise agreed by the Parties, any Determination shall be admissible in any judicial or arbitral proceedings in which all of the parties thereto were Parties to the DB proceedings in which the Determination was issued.

COMPENSATION OF THE DISPUTE BOARD MEMBERS AND ICC

Article 26

General Considerations

1

All fees and expenses of the DB Members shall be shared equally by the Parties.

2

Unless otherwise agreed by the Parties, when there are three DB members all DB Members shall be treated equally and shall receive the same Monthly Retainer Fee and the same Daily Fee for work performed as a DB Member.

3

Unless otherwise provided in the DB Member Agreement(s), the fees shall be fixed for the first 24 months following the signature of the DB Member Agreement(s) and thereafter shall be adjusted on each anniversary of the DB Member Agreement(s) in accordance with the terms thereof.

Article 27

Monthly Retainer Fee

1

Unless otherwise provided in the DB Member Agreement(s), each DB Member shall receive a Monthly Retainer Fee as set out in the DB Member Agreement(s) covering the following:

- being available to attend all DB meetings with the Parties and site visits;
- being available to attend internal DB meetings;
- becoming and remaining conversant with the Contract and the progress of its performance;
- the study of progress reports and correspondence submitted by the Parties in the course of the DB's functions; and
- office overhead expenses in the DB Member's place of residence.

2

Unless otherwise agreed in the DB Member Agreement(s), the Monthly Retainer Fee shall be equal to three times the Daily Fee set out in the DB Member Agreement(s) and shall be payable from the date of signature of the DB Member Agreement(s) until termination of the DB Member Agreement(s).

Article 28

Daily Fee

Unless otherwise agreed in the DB Member Agreement(s), each DB Member shall receive a Daily Fee as set out in the DB Member Agreement(s) covering the time spent for the following activities:

- meetings and site visits;
- hearings;
- travel time;
- internal meetings of the DB;
- study of documents submitted by Parties during procedures before the DB;
- preparation of a DB Determination; and
- activities in coordinating and organizing the operation of the DB.

Article 29

Travel Costs and other Expenses

1

Unless otherwise provided in the DB Member Agreement(s), air travel expenses shall be reimbursed at unrestricted business class rates between a DB Member's home and the travel destination.

2

Unless otherwise provided in the DB Member Agreement(s), expenses, wherever incurred in DB work, for local transportation, hotels and meals, long distance phone, fax, courier charges, photocopying, postage, visa charges, etc., shall be reimbursed at cost.

Article 30

Taxes and Charges

1

No taxes and charges, except for value added tax (VAT), levied in connection with the services rendered by a DB Member by the country of the residence or nationality of the DB Member shall be reimbursed by the Parties.

2

All taxes and charges levied in connection with such services by any country other than the DB Member's country of residence or nationality, as well as VAT wherever levied, shall be reimbursed by the Parties.

Article 31

Payment Arrangements

1

Unless otherwise agreed, invoices shall be submitted by each DB Member to each Party for payment as follows:

- Monthly Retainer Fees shall be invoiced and paid on a quarterly basis in advance for the next three-month period.
- Daily Fees and travel expenses shall be invoiced and paid after each meeting, site visit, hearing or Determination.

2

DB Member invoices shall be paid within 30 days after receipt.

3

Failure of any Party to pay its share of fees and expenses within 30 days of receiving a DB Member's invoice shall entitle the DB Member, in addition to any other rights, to suspend work 15 days after providing a notice of suspension to the Parties and any other DB Members, such suspension to remain in effect until receipt of full payment of all outstanding amounts plus simple interest at one-year LIBOR plus two per cent, or the twelve-month prime interest rate in the currency agreed between the Parties and the DB Members.

4

In the event that a Party fails to pay its share of the fees and expenses of a DB Member when due, any other Party, without waiving its rights, may pay the outstanding amount. The Party making such payment, in addition to any other rights, shall be entitled to reimbursement from the non-paying Party of all such sums paid, plus simple interest at one-year LIBOR plus two per cent, or the twelve-month prime interest rate in the currency agreed between the Parties and the DB Members.

5

Upon signing the DB Member Agreement, the Parties shall provide the DB Member with the form of the invoice to be sent by DB Members, including the invoicing

address, number of copies of invoices required and VAT number, if applicable.

Article 32

Administrative Expenses of ICC

1

ICC's administrative expenses include an amount for each appointment of a DB Member, an amount for each decision upon a challenge of a DB Member and, when the Parties have agreed to submit Decisions of a DAB or a CDB to ICC for review, an amount for each such review.

2

For each request for appointment of a DB Member, ICC shall receive the non-refundable amount specified in Article 1 of the Appendix. This amount shall represent the total cost for the appointment of one DB Member by the Centre. The Centre shall not proceed with the appointment unless the requisite payment has been received. The cost of each appointment by the Centre shall be shared equally by the Parties.

3

For each decision upon a challenge of a DB Member, the Centre shall fix administrative expenses in an amount not exceeding the maximum sum specified in Article 2 of the Appendix. This amount shall represent the total cost for the decision upon one challenge of a DB Member. The Centre shall not proceed with the rendering of its decision and the making of the challenge shall have no effect unless the said amount has been received. The cost of each decision by the Centre shall be borne by the Party making the challenge.

4

Where the Parties have provided for the review by ICC of a DAB's or a CDB's Decisions, the Centre shall fix administrative expenses for the review of each Decision in an amount not exceeding the maximum sum specified in Article 3 of the Appendix. This amount shall represent the total cost for the review of one Decision by ICC. The Centre shall not approve a Decision unless the said amount has been received. The cost of reviewing each Decision shall be shared equally by the Parties.

5

If a Party fails to pay its share of the administrative expenses of ICC, the other Party shall be free to pay the entire amount of such administrative expenses.

GENERAL RULES

Article 33 **Exclusion of Liability**

Neither the DB Members, nor the Centre, nor ICC and its employees, nor the ICC national committees shall be liable to any person for any act or omission in connection with the DB proceedings.

Article 34 **Application of the Rules**

In all matters not expressly provided for in the Rules, the DB shall act in the spirit of the Rules and shall make every effort to make sure that Determinations are issued in accordance with the Rules.

APPENDIX SCHEDULE OF COSTS

Article 1

The non-refundable amount for the request for appointment of a DB Member referred to in Article 32(2) of the Rules is US\$ 2 500. No request for appointment of a DB Member shall be processed unless accompanied by the requisite payment.

Article 2

Each request for a decision upon a challenge of a DB Member must be accompanied by a registration fee of US\$ 2 500. No request for a decision upon a challenge of a DB Member shall be processed unless accompanied by the registration fee. Such payment is non-refundable and shall be credited to the administrative expenses for a decision upon a challenge. The Centre shall fix said administrative expenses in an amount not exceeding the maximum sum of US\$ 10 000.

Article 3

Each Decision of a DAB or a CDB submitted to ICC for review must be accompanied by a registration fee of US\$ 2 500. No Decision shall be reviewed unless accompanied by the registration fee. Such payment is non-refundable and shall be credited to the administrative expenses for the review of each Decision. The Centre shall fix said administrative expenses in an amount not exceeding the maximum sum of US\$ 10 000.

MODEL DISPUTE BOARD MEMBER AGREEMENT

This Agreement is entered into between:

DB Member [*full name, title and address*],
hereinafter the 'Dispute Board Member' or 'DB Member'
and

Party 1: [*full name and address*]

Party 2: [*full name and address*],
hereinafter collectively referred to as the Parties.

Whereas:

The Parties have entered into a contract dated (the 'Contract') for [*scope of work and/or name of project*], which is to be performed in [*city and country of performance*];

The Contract provides that the parties must refer their disputes to a [*DRB/DAB/CDB*] under the ICC Dispute Board Rules (the 'Rules'); and

The undersigned individual has been appointed to serve as a DB Member.

The DB Member and the Parties therefore agree as follows:

1. Undertaking

The DB Member shall act as [*sole DB Member/chairman of the DB/DB Member*] and hereby accepts to perform these duties in accordance with the terms of the Contract, the Rules and the terms of this Agreement. The DB Member confirms that he/she is and shall remain independent of the Parties

2. Composition of the DB and Contact Details

- First alternative: The sole DB Member can be contacted as follows: [*name, address, telephone, fax and e-mail details*]

- Second alternative: The Members of the DB are those listed below and can be contacted as follows:

Chairman: [*name, address, telephone, fax and e-mail details*]

DB Member: [*name, address, telephone, fax and e-mail details*]

DB Member: [*name, address, telephone, fax and e-mail details*]

The Parties to the Contract are those indicated above with the following contact details:

Party 1: [*name, person responsible for the Contract, address, telephone, fax and e-mail details*]

Party 2: [*name, person responsible for the Contract, address, telephone, fax and e-mail details*]

Any changes in these contact details shall be immediately communicated to all concerned.

3. Qualifications

With respect to any DB Member appointed by the Parties, the undersigned Parties recognize that such DB Member has the necessary professional qualifications and language ability to undertake the duties of a DB Member.

4. Fees

The Monthly Retainer Fee shall be [*specify currency and full amount*], i.e. [*specify multiple*] times the Daily Fee. The Daily Fee shall be [*specify currency and full amount*] based upon a [*specify number of hours*]-hour day.

These fees shall be fixed for the first 24 months after the signing of the DB Member Agreement and thereafter shall be adjusted automatically on each anniversary of the DB Member Agreement using the following index:

.....

Expenses of the DB Member, as described in Article 29(2) of the Rules, shall be reimbursed [*at cost/on the basis of a fixed per diem of.....*].

5. Payment of Fees and Expenses

- First alternative: All fees and expenses shall be invoiced to [*Party X*] with a copy to [*Party Y*] and shall be paid to the DB Member by [*Party X*]. [*Party Y*] shall reimburse half of the fees and expenses to [*Party X*] so that they are borne equally by the Parties.

- Second alternative: All fees and expenses shall be invoiced to and paid by each of the Parties in equal shares.

All payments to the DB Member shall be made without deductions or restrictions to the following account: [*name of bank, account no., SWIFT code, etc.*]. The transfer charges shall be borne by the Party making the transfer.

All payments shall be made within 30 days of receipt by a Party of the invoice from the DB Member.

6. Duration and Termination of the Agreement

Subject to the provisions of this Article 6, the DB Members agree to serve for the duration of the DB.

The Parties may jointly terminate this Agreement or terminate the whole DB at any time by giving [*specify number*] months' written notice to the DB Member or the whole DB.

The DB Member may resign from the Dispute Board at any time by giving [*specify number*] months' written notice to the Parties.

7. Indemnity

The Parties will jointly and severally indemnify and hold harmless every DB Member from any claims of third parties for anything done or omitted in the discharge or purported discharge of the DB Member's activities, unless the act or omission is shown to have been in bad faith.

8. Disputes and Applicable Law

All disputes arising out of or in connection with this Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with the said Rules of Arbitration. This Agreement shall be governed by [*specify applicable law*]. The place of arbitration shall be [*name of city/country*]. The language of the arbitration shall be [*specify language*].

This Agreement is entered into on [*specify date*] at [*specify place*].

DB Member	Party 1	Party 2
[<i>signature</i>]	[<i>signature</i>]	[<i>signature</i>]