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Entrepreneurs PI  
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**Rules  
of the Center of Arbitration of the National Chamber of Entrepreneurs of the  
Republic of Kazakhstan**

Astana, 2014

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## Introduction

These Rules of the Arbitration Center of the National Chamber of Entrepreneurs of the Republic of Kazakhstan (the “Arbitration Center”) determines the procedure of organizing its activities. Organizational and procedural regulations, as well as the requirements, specified by these Rules for international arbitral tribunals (arbitrators) are applicable for domestic arbitration courts or arbitral tribunals (awarder) and vice versa, within the limits, established in accordance with the legislation. Disputes between the residents of the Republic of Kazakhstan shall be proceeded in arbitral proceedings subject to the Law “On Arbitration Courts”. In the cases, when at least one of the parties is a non-resident of the Republic of Kazakhstan, arbitral proceedings shall be conducted subject to the provisions of the Law “On International Arbitration”.

## Chapter I. General Provisions

### Article 1. Status of the Arbitration Center

1. Arbitration Center is an independent, institutional commercial arbitration (arbitral tribunal), created and performing its functions according to the legislative acts of the Republic of Kazakhstan and these Rules of the Arbitration Center (the “Rules”) and international treaties, ratified by the Republic of Kazakhstan.

### Article 2. Competence of the Arbitration Center.

1. Arbitration Center considers disputes, arising from civil law relations, between legal entities (including foreign companies) and (or) individuals (including individual entrepreneurs) regardless their citizenship, permanent residence or location.

2. The Arbitration Center shall decide the question about presence or absence of authority (jurisdiction) to consider the dispute, submitted to them for settlement, within 7 (seven) days from the moment of receiving the statement or motion, including the cases, when one of the parties is against the arbitral proceedings for the reason of invalidity of arbitration agreement. As a result of the consideration, corresponding decision shall be issued.

If required, the stated time limits may be extended.

3. Disputes, which affect interests of the juvenile and persons, who have been acknowledged to be legally incapable in accordance with the law, as well as other disputes specified by laws, are not subject to the jurisdiction of the Arbitration Center.

### Article 3. Arbitration Agreement

1. The Arbitration Center has jurisdiction over disputes, in case of the existence of arbitration agreement. Arbitration agreement may be concluded in form of an arbitral clause in a contract, separate agreement to a contract or in a reference in a contract to a document, which contains an arbitral clause and is a part of the contract, as well as contained in the exchange of letters, telegrams, telephoned messages, fax messages, electronic documents, determining the subjects and containing declaration of their intention.

2. Arbitration agreement is deemed to be concluded also in the cases, if the Claimant submits a Request for Arbitration to the Arbitration Center, and the Respondent responds to the claim without arguments against consideration of the dispute in the Arbitration Center.

3. The parties may agree on submitting their dispute to the Arbitration Center during the consideration of the dispute by the court of competent jurisdiction before the judgment is awarded by the above mentioned court.

4. Arbitration agreement (clause) shall be an independent agreement by the parties and shall have an effect regardless the term and validity of the transaction (contract), in relation to which it was concluded. The arbitration agreement may be terminated by the consent of the parties in the same order in which it was concluded.

5. Conclusion of the arbitration agreement by the parties on submitting the dispute to the Arbitration Center shall mean the agreement of the parties with these Rules (with all amendments, in effect at the moment of submission of the Request for Arbitration, prior to arbitral proceedings), which is considered to be an integral part of the arbitration agreement.

#### Article 4. Applicable Law

1. Dispute in the Arbitration Center shall be arbitrated in accordance with the regulations, which the parties have chosen as applicable to the substance of the dispute. Any reference to the law or legal system of any state shall be interpreted as directly referring to a substantive law of that state, but not to its conflict rules.

2. If the parties have not reached an agreement on applicable law, the Arbitration Center shall determine the applicable law in accordance with the legislation of the Republic of Kazakhstan.

3. In the absence of rules, governing a specific legal relationship, the Arbitration Center shall decide in accordance with the terms of the contract and trade usages, applicable to the given transaction (contract).

#### Article 5. Confidentiality

1. The Secretary-General, arbitrators, employees of the Secretariat, as well as the parties and other participants of the arbitral proceedings may not disclose information, which came to their notice during the consideration of the dispute in the Arbitration Center and was determined by the parties as confidential, without the consent of the parties or their legal successors.

#### Article 6. Waiver of Right to Object

1. A party, who knows that any provision (requirement) of these Rules or the arbitral agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance within 7 (seven) calendar days from the moment of knowing it, shall be deemed to have waived its right to object.

## Article 7. Time Limits and Their Calculation

1. Acts, related to the proceedings shall be conducted in time limits, established by these Rules. In case if time limits for such acts are not established by these Rules, the time limits shall be determined by the arbitral tribunal in accordance with legislation in force.

2. Time limits shall be determined by calendar dates, by indicating an event that shall take place inevitably, or a period of time. In case of the latter, the act may be performed during the period.

3. Running of the time limit, determined by a period, shall start the next day after the calendar date or an event, which determines its beginning, and ends on the last day of the specified period. In cases, when the last day of the specified period is a non-business day, the period shall expire on the first following business day.

4. When found appropriate, the right to extend the specific cases' time limits, determined by these Rules, is entitled to the Secretary-General prior to formation of the composition of arbitral tribunal; and to the arbitral tribunal after its formation.

## Article 8. Registration and Document (Cases) Keeping in the Arbitration Center

1. All documents, provided by the parties to arbitral proceedings to the Arbitration Center, are subject to compulsory registration. Date and time of registration of the documents is deemed to be the date and time of receiving them.

2. A considered case shall be kept in the Arbitration Center not less than five years from the date of awarding the final decision.

## Chapter II. Costs, Related to the Settlement of Disputes in the Arbitration Center

### Article 9. Arbitral Costs

1. Arbitral costs consist of registration and arbitration fees, as well as the expenses, connected with the settlement of disputes.

2. The amount of the registration fee is fixed and is non-refundable.

3. The amount of registration and arbitration fees, procedure of their payment and allocation, as well as procedure of covering other costs of arbitral proceedings, shall be determined by the Regulations on costs of arbitral proceedings (hereinafter Regulations), which is an integrate part of these Rules (Appendix 1).

4. The arbitral proceedings shall not be conducted before the payment of registration and arbitration fees is made.

5. Expenses, related to the settlement of dispute in the Arbitration Center, include: amounts, payable to experts and interpreters; expenses incurred by witnesses; fees for the service of a representative of a party, in favor of whom the arbitral award was made; costs incurred by arbitrators due to inspection and examination of documentary and physical evidences in their location and other costs.

6. Arbitrator's fee shall be determined by arbitral tribunal in each specific case, taking into account the amount in dispute, complexity of the dispute, time spent by the arbitrator for arbitral proceedings, and other circumstances related to the case in the form and in the amount, determined by the Regulations. In case of over-estimation of

the fee rate by the arbitral tribunal, the Secretary-General shall correct the sum of the fee in accordance with the Regulations.

7. Prior to the formation of the composition of arbitral tribunal, the Executive Secretary, and subsequent to its formation – the arbitral tribunal is eligible to compel any of the parties to provide security to the expenses, related to the proceedings on the case, by providing bank guarantee or other means deemed necessary.

Article 10. Allocation of Costs, Related to the Settlement of Disputes in the Arbitration Center.

1. Allocation of costs, related to the settlement of disputes between parties shall be conducted by arbitral tribunal in accordance with an agreement between parties, and in the absence of such agreement, the expenses shall be covered by the defeated party or by the parties, if the arbitral tribunal deems necessary to allocate the costs between them taking into account circumstances of the case.

2. Service fees of the representative of the party, in favor of whom the arbitral award was made, as well as other expenses, related to the arbitral proceedings, may be charged to the other party, if reimbursement demand was filed during the arbitral proceedings and met by the arbitral tribunal, provided that the amount of service fees, subject to reimbursement does not exceed 10 (ten) per cent of satisfied part of the claim.

3. Allocation of costs, related to the settlement of the dispute, shall be indicated in the award of the arbitral tribunal.

Chapter III. Organization of Activities of the Arbitration Center

Article 11. Organizational Structure

1. Arbitration Center consists of the Secretary-General, arbitrators and the Secretariat, headed by the Executive Secretary, as well as other structural and regional subdivisions.

2. The Secretary-General of the Arbitration Center makes decisions on questions, related to its activities, specified in these Rules.

3. The Secretary-General has overall charge of the Arbitration Center and monitors compliance with these Rules, with a right to conclude transactions and grant a power of attorney, represents the Arbitration Center in appropriate bodies, certifies copies of awards, determinations, and other documents, and performs other functions, specified in these Rules.

4. In case if the Secretary-General is not able to perform his/her functions due to illness, business trips or other reasons, his/her functions during the relevant period shall be performed by the Executive Secretary or other employee of the Arbitration Center, appointed by the Secretary-General of the Arbitration Center.

Article 12. Registry of Arbitrators

1. Registry of arbitrators of the Arbitration Center shall be approved by its Administrative Council, and contain name, surname and patronymic name (if available)

of the arbitrator, his/her education, profession or areas of expertise, academic degree and title (if available), work experience indicating place of work, position and period of work, foreign language skills, his/her permanent place of residence (city, country), as well as other information.

Registry of arbitrators shall remain in force until a new registry of arbitrators is approved.

Registry of arbitrators shall be published in mass media, including the internet resource of the Center of Arbitration or the National Chamber of Entrepreneurs of the Republic of Kazakhstan, and presented on request to any interested person by the Secretariat of the Arbitration Center.

2. Registry of arbitrators of the Arbitration Center shall include individuals, meeting the following requirements:

- 1) aged of twenty-five or more;
- 2) with higher education;
- 3) with a work experience in law sphere or in the specific sector of economy (e.g. funding and finance, construction and industries, etc.) not less than two years;
- 4) persons other than those, the power of whom as a judge of the competent court, attorney, notary, investigator, prosecutor or other law enforcement official or in any other position was terminated due to committing an offence, incompatible with their professional activities;
- 5) possessing knowledge in the sphere of settlement of disputes, attributed to competence of the arbitral tribunal.

An individual holding Master degree or PhD, as well as MCI Arb (Member of Chartered Institute of Arbitrators) is preferable.

3. A sole arbitrator must have a law degree and a relevant professional experience not less than two years. In case of settlement of disputes by several arbitrators, a presiding of the composition of arbitral proceedings must have a law degree.

4. Registry of arbitrators shall not include persons:

- 1) elected or appointed by judges of competent court in accordance with the procedures, established by the legislative enactment of the Republic of Kazakhstan;
- 2) adjudged incapable or partially incapable in accordance with the procedures, established by the law of the Republic of Kazakhstan;
- 3) who have unexpunged or unspent conviction or persons, who are accused in committing offense or crime.
- 4) who serve as state or military employees, deputies of representative bodies, conducting their activity on permanent or acquitted basis, paid out of the funds of the state budget.

5. Removal from the registry of arbitrators shall be conducted at arbitrators' own request or upon the recommendation of the Disciplinary Council by the Administrative Council of the Arbitration Center.

Composition of the Disciplinary Council shall be approved by the Secretary-General of the Arbitration Center and shall consist of 5 (five) persons, including 2 (two) representatives of the Arbitration Center and 2 (two) representatives from the

registry of arbitrators. The Disciplinary Council acts under the direction of the Executive Secretary. Term of appointment of the Disciplinary Council members is 2 (two) years.

Decision of the Disciplinary Council shall be made by majority of votes, and in the event of a tie, the Chairman shall have a casting vote. Meeting of the Disciplinary Council is legally competent, provided that not less than 2/3 of the composition of the Disciplinary Council is present. Based on the outcomes of the meeting of the Disciplinary Council, a decision shall be rendered, which shall be performed in writing and signed by the Chairman of the Disciplinary Council.

#### Article 13. Secretariat of the Arbitration Center

1. Secretariat acts under the direction of the Executive Secretary, who organizes office administration and workflow management of the Arbitration Center and the Disciplinary Council, provides proper documentation of their awards, proper keeping of all written materials, organizes publication of arbitral awards (determinations) as agreed by the parties (in cases, provided by Article 44 of these Rules – upon the agreement with third persons), deals with the issues of distributing information about the activities of the Arbitration Center, and performs other functions, provided by these Rules.

2. The Executive Secretary is obliged to be present at all proceedings, conducted by arbitral tribunal in the form of oral proceedings or in an online mode and take the minutes.

3. If deemed necessary, as well as in the cases of absence of the Executive Secretary due to illness, business trips, business or other reasons, his/her functions on a specific case during the relevant period shall be performed by an employee of the Arbitration Center or an employee of a regional subdivision, appointed by the Secretary-General of the Arbitration Center.

4. Employees of the Secretariat, including the Executive Secretary must have a higher education in law (law degree), and be appointed by the Secretary-General of the Arbitration Center.

5. The Executive Secretary in his/her activities is accountable to the Secretary-General of the Arbitration Center.

### Chapter IV. Commencement of Arbitral Proceedings

#### Article 14. Request for Arbitration

1. Submission of a dispute to the Arbitration Center shall be conducted through filing a written Request for Arbitration (including but not limited to requests in electronic form, verified by digital signature) by a party, who wishes to commence arbitration (the “Claimant”).

#### Article 15. Contents of the Request for Arbitration

1. The Request for Arbitration must contain:

1) date of request submission;

- 2) name of the Claimant, his/her postal address and bank account details;
- 3) name of the Respondent, his/her postal address and bank account details, if these details are known to the Claimant;
- 4) explanation of reasons of submitting the Request to the Arbitration Center;
- 5) stated claims by the Claimant;
- 6) circumstances, upon which the Claimant bases his/her demands;
- 7) evidences, supporting causes of the stated claims;
- 8) amount in dispute, if the claim is subject to evaluation;
- 9) names and surnames of arbitrator and reserve arbitrator, elected by the Claimant from the registry of arbitrators, or a request to appoint the arbitrator or a reserve arbitrator by the Secretary-General of the Arbitration Center.
- 10) suggestions, regarding a place of arbitration, the applicable law and language of proceedings;
- 11) list of documents and other materials attached to the Request.

2. The following shall be attached to the Request for Arbitration:

- 1) copies of the Request for Arbitration in a number equal to the number of Respondents, arbitrators and one copy for the Arbitration Center;
- 2) a document, confirming payment of arbitration fee, which includes the registration fee;
- 3) documents, confirming circumstances, upon which the Claimant bases his/her demands, copies of these documents for the Respondents, arbitrators and one copy for the Arbitration Center, unless they have such copies;
- 4) the Claimant's motion for deferral, payment by installments of the arbitration expenses or their reduction, for providing security to expenses, disclosure of evidences and other requests, unless they are stated in the Request for Arbitration;
- 5) the Request for Arbitration and documents attached to it in electronic format (Word/PDF or other electronic format).

The Claimant may attach to his/her Request for Arbitration other documents, which he/she considers to be relevant to the case or may refer to documents or evidences, which he/she will submit later.

3. The Request for Arbitration must be signed by the Claimant or his/her representative, provided that he/she is entitled to sign and submit the request. In case, if the Request for Arbitration is submitted by a representative of the Claimant, an original letter of attorney (its certified copy) or other document, proving power of the representative must be attached to the Request.

4. The Request for Arbitration and attached documents must be submitted in Kazakh or Russian language. In case, if the Request for Arbitration is submitted in other languages, the Claimant shall provide a certified translation of the above mentioned documents into Kazakh or Russian.

5. During the arbitral proceedings, the parties are entitled to amend or supplement their claims or counterclaims. Prior submission of a claim for settlement of the dispute in the Arbitration Center is not compulsory.

## Article 16. Amount in Dispute

1. Amount in dispute is determined by the following:

- 1) in the claims for recovery of money – by the claimed amount;
- 2) in claims for reclamation of property – by the cost of the claimed property;
- 3) in claims for recognition or transformation of legal relations – by the cost of the subject of legal relations at the moment of submitting the claim;
- 4) in claims for specific act or omission – based on available data about property interests of the Claimant.

The Claimant is obliged to indicate an amount in dispute in the Request for Arbitration even in the cases where a part of the stated claims has non-property character.

2. In the claims, containing several demands, amount of each demand must be determined separately. In this case the amount in dispute shall be determined by total amount of all demands.

3. The amount in dispute shall include demanded penalty sum (fines, delay interests) and other contractual guaranties, indicated in the Request for Arbitration.

4. When submitting a claim for contract termination, for invalidation of contract fully or partially, a claim for enforcement of a contract or when other similar demands are stated, the amount in dispute shall be determined according to the total amount of the contract.

5. If the Claimant did not determine or determined improperly the amount in dispute, Arbitral tribunal shall determine it upon its own initiative, or according to the demand of the Respondent on the basis of available data.

6. If determination of the amount in dispute is difficult at the moment of submission of the Request for Arbitration, the amount of arbitration fee shall be pre-determined by the Secretary-General of the Arbitration Center with subsequent recovering of the fee according to the amount in dispute, determined by the arbitral tribunal.

## Article 17. Receipt of the Request for Arbitration

1. During 7 (seven) business days from the moment of receiving the Request for Arbitration, the Executive Secretary, except as provided in Articles 18, 19 of these Rules, shall register it (date of registration is deemed to be the date of receipt), examine for compliance with these Rules and prepare materials, necessary for arbitral proceedings.

## Article 18. Suspension of the Request for Arbitration

1. In case of non-compliance of the Request for Arbitration to the requirements of Article 15 of these Rules or non-payment of registration and arbitration fees by the Claimant, the Executive Secretary during 7 (seven) business days from the moment of receiving the Request for Arbitration shall notify the Claimant about suspension of the Request for Arbitration, indicating deficiencies and determining time limit for their elimination, which may not exceed 10 (ten) business days.

2. In case if the Claimant corrects the deficiencies, indicated in the notification, by the specified time, the Request for Arbitration is deemed to have been submitted on the date when it was first filed to the Arbitration Center. Otherwise the Request for

Arbitration shall be deemed to be unfiled and returned to the Claimant with all attached documents.

#### Article 19. Return of the Request for Arbitration

1. Arbitration Center shall return the Request for Arbitration, if:
  - 1) there is no arbitration agreement between the parties;
  - 2) subject matter of the claim is not within the scope of arbitration agreement;
  - 3) the Request for Arbitration is signed by an unauthorized person;
  - 4) the Claimant files a statement to return the Request for Arbitration;
  - 5) in proceedings of the Arbitration Center or other arbitration there is a case on the dispute between the same parties, about the same subject and on the same grounds;
2. Return of the Request for Arbitration shall not prevent the Claimant from re-filing a claim to the Arbitration Center to the same Respondent, on the same subject and on the same grounds.
3. Decision on returning the Request for Arbitration shall be sent or handed out against receipt to the Claimant.

#### Article 20. Answer to the Request

1. Within 30 (thirty) calendar days from the receipt of notification about conduction of arbitral proceedings the Respondent may provide an Answer to the Request to the Arbitration Center, which may contain:
  - 1) statement of the Respondent on recognition of stated claims fully or partially;
  - 2) objection to the stated claims and the circumstances on which they are based;
  - 3) information about evidences, to which the Respondent is referring to in support of his/her objections;
  - 4) any other explanations on the matter of the stated claims and motion for committing actions, allowed in accordance with these Rules;
  - 5) names and surnames of arbitrators and a reserve arbitrator elected by him/her or a request to appoint an arbitrator or a reserve arbitrator by the Secretary-General of the Arbitration Center.
2. Failure to present an answer to the Request by the Respondent may not be considered to be a confirmation of recognition of claim and shall not prevent from conducting the proceedings with evidences available in the case.

#### Article 21. Counterclaim and Offsetting of Counter Demands

1. The Respondent is eligible to file a counterclaim provided that the counter demands are reciprocally connected with the demands of the Claimant, as well as provided that the counterclaim may be considered by arbitral tribunal in accordance with arbitration agreement.
2. The Counterclaim may be filed during the arbitral proceedings prior to making award by the arbitral tribunal, unless other time limits to file counterclaim are agreed by the parties.

3. Questions on receiving counterclaim to proceeding, its suspension or returning shall be decided by the arbitral tribunal. Filing a counterclaim during the arbitral proceedings shall not affect the composition of the arbitral tribunal.

4. The counterclaim must comply with the requirements of Article 15 and 16 of these Rules.

5. The Claimant is eligible to file an objection against counterclaim within the period of 7 (seven) calendar days from the date of its filing by the Respondent.

6. Unless otherwise agreed by the parties, the Respondent is eligible to demand offsetting of counterclaim in compliance with requirements of the applicable law.

7. Counterclaim with material demands is considered at the same time with the main claim provided that the arbitration fee is paid.

8. If, in consequence of unreasonable delay to file a counterclaim or demand of offsetting by the Respondent, arbitral proceedings take longer, a liability to cover extra expenses and costs of other party, caused by this delay, may be imposed on the Respondent.

9. Arbitral tribunal may find inappropriate granting permission to file counterclaim or to demand offsetting, if the Respondent commits unreasonable delay.

#### Article 22. Amendment of the Stated Claims or Objections

1. During the arbitral proceedings prior to making an award any of the parties may amend or supplement their stated claims or objections, if the arbitral tribunal finds reasonable such amendments and supplements.

2. In case, if the arbitral tribunal finds unreasonable the delay, committed by a party when amending or supplementing stated claims, it may impose to it a liability to cover extra expenses and costs of the other party, caused by this delay.

### Chapter V. Composition of Arbitral Tribunal

#### Article 23. Arbitrators

1. Arbitrator shall be elected (appointed) from persons, included in the registry of arbitrators, who are not directly or indirectly interested in the outcome of the case, are independent from parties and have agreed to perform duties of an arbitrator.

2. When a person is approached regarding his/her possible election (appointment) as an arbitrator on a specific case, he/she is obliged to disclose any circumstances likely to give rise to justifiable doubts as to his/her impartiality and independence.

3. An arbitrator must be governed by these Rules and be objective in his/her activity. He/she may not act at the same time as an arbitrator and a representative of a party.

4. Arbitrators must not consult any of the parties on the subject matter or outcome of the case neither prior to their election (appointment), nor after their election (appointment).

5. Arbitrators shall complete a statement on independence using a pro-forma provided in the Appendix 2 of these Rules.

#### Article 24. Number of Arbitrators

1. Parties are entitled to determine the number of arbitrators, which must be an odd number and consist of one or three arbitrators.
2. If the parties have not agreed on the number of arbitrators within the established time limit, the formation is conducted by the Secretary-General of the Arbitration Center.
3. Functions of the arbitral tribunal, provided by these Rules are also applicable to a sole arbitrator.

#### Article 25. Time Limits and Procedure of Election (Appointment) of Arbitrators

1. Formation of arbitral tribunal shall be conducted by electing (appointing) arbitrators (an arbitrator) at the parties' choice from the registry of arbitrators.
2. The Executive Secretary shall give each of the parties on their request an opportunity to familiarize with the information, regarding professional experience and education of arbitrators from the registry of arbitrators of the Arbitration Center, excluding information related to private life of arbitrators.
3. If the dispute is considered by 3 (three) arbitrators, each of the parties shall elect one arbitrator, and two arbitrators, elected in such a way, shall elect the third arbitrator – Presiding of Arbitral Proceedings.
4. If one of the parties do not elect an arbitrator within 30 (thirty) calendar days from the moment of receiving a notification according to Article 27 of these Rules, or if two elected arbitrators within 10 (ten) calendar days after their election do not elect the third arbitrator (Presiding of Arbitral Proceedings, including a reserve Presiding), then an arbitrator (arbitrators, including Presiding of Arbitral Proceedings, including a reserve one) shall be appointed by the Secretary-General of the Arbitration Center from the registry of Arbitrators within the following 5 (five) calendar days.
5. Procedure of election (appointment) of a sole arbitrator is regulated by Article 26 of these Rules.
6. Arbitrator or arbitrators considering a case, regardless of their quantity, are referred to as a composition of arbitral tribunal during the consideration of a case.
7. Upon the agreement of the parties the Secretary-General of the Arbitration Center shall appoint all members of the composition of arbitral tribunal within 5 (five) calendar days from the moment of receiving consent (statement) of the parties.
8. In case of existence of several Claimants or Respondents, all co-Claimants or co-Respondents shall be deemed to be one party, and each of the parties shall elect one arbitrator.
9. The Secretary-General of the Arbitration Center shall award a reasoned decision on appointment of a sole arbitrator or composition of arbitral tribunal.  
If an elected (appointed) arbitrator is an employee of the Arbitration Center, he/she shall be excused from performance of his/her employment duties for the period of arbitral proceedings with his/her participation.
10. Within the time-limits, provided by these Rules for election of an arbitrator (arbitrators), the parties are also obliged to elect a reserve arbitrator (arbitrators).

11. If the parties made provisions on the submission of disputes, which arise or can arise between them, to a permanent arbitration (arbitral tribunal), but did not appoint (indicate) a type of arbitration (arbitral tribunal) or did not agree on this question, then according to Article 4 of the European Convention on International Commercial Arbitration (Geneva, April 21, 1961) the Secretary-General of the Arbitration Center at the Claimant's request may appoint a specific arbitration body, including the Arbitration Center of the National Chamber of Entrepreneurs of the Republic of Kazakhstan.

#### Article 26. Election or Appointment of a Sole Arbitrator

1. Where the parties have agreed that the dispute shall be resolved by a sole arbitrator, the parties must agree on and elect a sole arbitrator and a reserve arbitrator within 30 (thirty) calendar days from the moment of notification about the reception of the Request for Arbitration.

2. If the parties do not elect a sole arbitrator and a reserve arbitrator within the established time limit, the Secretary-General shall send each of the parties a list, containing not less than 3 (three) names of arbitrators. Within 15 (fifteen) days of receiving such a list each of the parties shall inform about an arbitrator and a reserve arbitrator elected by them to the Arbitration Center.

3. In cases, when the parties do not elect a sole arbitrator and a reserve arbitrator within the established time limit, then a sole arbitrator and a reserve arbitrator shall be appointed by the Secretary-General of the Arbitration Center from the registry of Arbitrators within 5 (five) following calendar days.

#### Article 27. Notification of Parties

1. The Executive Secretary shall send a notification to the Claimant on the reception of the Request for Arbitration, attaching these Rules, within 7 (seven) business days after the registration of the Request.

2. At the same time with sending a notification to the Claimant, the Executive Secretary shall send a similar notification to the Respondent, attaching these Rules, the registry of arbitrators, the Request for Arbitration with the case materials, in which it is suggested to the Respondent to submit an answer to the Request for Arbitration.

3. Notification must contain:

- 1) information on submission of the dispute to arbitral proceedings;
- 2) name and addresses of the parties;
- 3) reference to the arbitration agreement;
- 4) reference to a contract (agreement), under which or in respect of which the dispute has arisen;
- 5) general statement of the nature of the dispute and in the claims of ownership - amount of demanded amount;
- 6) suggestion regarding the number of arbitrators (i.e. one or three, if the number was not previously agreed by the parties);
- 7) suggestion on the choice of the place of arbitration;
- 8) suggestion on the choice of language of arbitral proceedings;

- 9) suggestion on applicable law;
- 10) information on the need to elect an arbitrator and a reserve arbitrator from the registry of arbitrators.

#### Article 28. Replacement of an Arbitrator (a Reserve Arbitrator)

1. Within the time limits, established by these Rules to elect an arbitrator (arbitrators), the parties are also obliged to elect a reserve arbitrator (arbitrators) from the registry of arbitrators. Non-election of a reserve arbitrator (reserve arbitrators) by any of the parties or a reserve Presiding of Arbitral Proceedings by arbitrators (reserve arbitrators) involves consequences, provided in paragraph 4 of Article 25 of these Rules.

2. In case of termination of power of the arbitrator, he/she shall be substituted by a reserve arbitrator according to the regulations of these Rules.

3. In the cases, when the replacement cannot take place, a new Presiding of the Arbitral Proceedings, a sole arbitrator or arbitrators shall be elected or appointed in accordance with these Rules. If a Presiding of the Arbitral Proceedings, a sole arbitrator or arbitrators were appointed by the Secretary-General of the Arbitration Center, new appointments shall be also made by him/her.

4. In case of replacement of a Presiding of the Arbitral Proceedings or a sole arbitrator, in accordance with Article 30 of these Rules, all hearings on the case, which took place prior to his/her replacement, must be renewed from the beginning.

If any other arbitrator is replaced, such preceding hearings may be renewed at the discretion of arbitral tribunal considering opinions of the parties.

#### Article 29. Termination of Power of Arbitrator

1. Power of an arbitrator may be terminated on the grounds, stipulated by these Rules, including in the case of non-fulfillment of his/her powers within the established time limit for considering the dispute or persistent incapability to perform his/her duties due to illness, death or abdication of his/her power to consider the dispute, challenge (or self-rejection of his/her power) of an arbitrator.

2. In case of termination of power of arbitral tribunal or a sole arbitrator, proceedings on the dispute under consideration shall be submitted to consideration to a reserve composition of arbitration (arbitral tribunal) or a reserve sole arbitrator.

3. Power of arbitrator shall be also terminated after making an award on a specific case or in case if the parties have agreed regarding such termination. In cases, provided for in Article 52 of these Rules, power of an arbitrator shall be resumed, and then terminated after commitment of actions, specified by the referred article.

4. If an arbitrator, a Presiding of Arbitral Proceedings or a sole arbitrator are not able to perform their functions for any reason, each of the parties are eligible to approach the Secretary-General of the Arbitration Center with a request to solve their question on termination of their (his/her) power as an arbitrator of this case.

5. Power of an arbitrator, a Presiding of Arbitral Proceedings or a sole arbitrator shall be also terminated if an application on self-rejection of his/her power is submitted by them, and a reasoned determination shall be rendered on this.

### Article 30. Challenge of an arbitrator

1. A party may challenge an arbitrator in accordance with this Article in case, if the circumstances giving rise to a challenge, have become known to a party during the process of formation of the composition of arbitral tribunal. In this case, a question on the challenge of an arbitrator shall be decided by the Secretary-General of the Arbitration Center within 10 (ten) calendar days from the moment of receiving a written reasoned statement of the party.

2. An arbitrator may be challenged at any stage of the arbitral proceedings, but not later than the withdrawal of the arbitral tribunal to a conference room to make an award.

3. Any of the parties is eligible to file a reasoned statement in writing about challenge of an arbitrator within 15 (fifteen) calendar days from the day, when the circumstances, which may be a reason for a challenge have become known or arisen:

1) in case of non-compliance of the arbitrator to the requirements of these Rules;  
2) the arbitrator interferes with the progress of the arbitral proceedings by act or omission, including if he/she was absent on session of arbitral proceeding twice for no reasonable excuse;

3) during the progress of arbitral proceedings an arbitrator has allowed the disclosure of information to happen, determined by the parties as confidential, which lead to any negative consequences;

4) violation by an arbitrator of ethical standards of conduct, expressed in disrespectful attitude to the participants of arbitral proceedings;

5) there are circumstances giving rise to justifiable doubts as to his/her impartiality or independence.

4. Decision on challenge or rejection shall be made by an arbitral tribunal. Question on the challenge of an arbitrator, solely considering a dispute, shall be solved by the Secretary-General of the Arbitration Center. Decision on satisfaction or rejection of the statement on challenge, made by the Secretary-General of the Arbitration Center is final.

5. A party is deemed to have waived of its right to challenge, if within the established time limit an arbitrator was not challenged by it, or statement on challenge was filed after the withdrawal of the composition of an arbitral tribunal to a conference room to make an award.

6. If both parties to arbitral proceedings agree with a challenge of an arbitrator, then an arbitrator must retire from his/her responsibility. A reasoned determination shall be rendered about the retirement from responsibility.

7. Determination on the challenge of an arbitrator shall be prepared in writing without indication of the reason of challenge and shall be accompanied with an instruction on succession in title to a reserve arbitrator or suggestion on appointing an arbitrator a reserve Presiding of the Arbitral Proceedings.

## VI. Conduct of Arbitral Proceedings

### Article 31. Rules of Arbitral Proceedings

1. Composition of an arbitral tribunal shall determine rules of proceedings, including time limits and procedure of hearings, as well as committing single acts, in accordance with these Rules.

2. Where not agreed by the parties and not determined by the rules of proceedings, rules of arbitral proceedings shall be determined by the composition of arbitral tribunal taking into account the principle of equality of the parties, objectivity and effective process of settlement of dispute.

### Article 32. Time Limit of Arbitral Proceedings

1. Time limit of arbitral proceedings and making an arbitration award must not exceed 2 (two) calendar months from the moment of formation of the composition of arbitral tribunal.

2. Time limit of arbitral proceedings may be extended by the arbitral tribunal, as well as if the need arises – by the decision of the Secretary-General of the Arbitration Center.

### Article 33. Form of Arbitral Proceedings

1. Consideration of cases by arbitral tribunal may be conducted in the following forms:

- 1) oral hearings where the parties (one party) are present in person;
- 2) on the basis of the submitted materials without the presence of parties, provided that both parties have submitted a motion to consider the case in their absence;
- 3) in an online mode (using communication technologies).

2. Oral hearings shall be carried out during the sessions of arbitral proceedings, on which the parties are given an opportunity to produce evidences, question other participants of the arbitral proceedings, state their position on the case orally, give explanations and participate in a debate. The hearing shall be held in camera. Upon authorization of the arbitral tribunal and agreement of the parties, persons who do not participate in the arbitral proceedings may be present.

3. About time and place of the first hearing on the case the parties shall be informed by notifications, which must be sent in such an estimation, that each of the parties has at least 10 (ten) calendar days to prepare and arrive at the oral hearing. Upon the agreement between the parties, this time limit may be reduced.

4. If there is a need to conduct the subsequent oral hearings, the date of their conduction shall be decided by arbitral tribunal taking into account specific circumstances.

### Article 34. Place of Arbitration

1. If the parties have not agreed earlier on the place of arbitration, then such place shall be determined by a composition of arbitral tribunal taking into account cir-

cumstances of the case. Arbitration award is deemed to be made at the place of arbitration.

2. Composition of the arbitral tribunal is eligible to:

1) determine a place of proceedings within a country or a city, on which the parties have agreed;

2) conduct visiting sessions, including in order to familiarize with evidences of the case and hear witnesses and settle the dispute on the merits;

3) decide on conducting hearings in one of his/her permanent offices or other place.

3. All additional costs, incurred due to the conduction of proceedings shall be charged to the parties. Arbitral tribunal may demand from parties to preliminary provide relevant security for compensation of these expenses.

#### Article 35. Language of Arbitral Proceedings

1. Parties at their own discretion may agree on the language, which will be used during the arbitral proceedings. In the absence of such agreement the composition of arbitral tribunal shall determine Kazakh or Russian language, as well as other languages, which must be used during the proceedings.

In case if other than Kazakh or Russian language is determined as a language of arbitral proceedings by agreement of the parties, the parties are obliged to secure the participation of interpreter at their own cost in equal proportion, with a right to compensate these costs according to Article 10 of these Rules.

2. In case if a party cannot speak the language of arbitral proceedings, it shall provide itself with interpreter services at its own discretion and at its own cost in order to familiarize with materials of the case and participate in the arbitral proceedings.

3. In case if an arbitrator cannot speak the language of arbitral proceedings, interpreter services shall be provided by the Arbitration Center with subsequent allocation of costs in accordance with Articles 9 and 10 of these Rules.

4. A party, submitting documents and other materials in a language other than a language of arbitral proceedings, shall provide their translation.

#### Article 36. Notification on the Commencement of Arbitral Proceedings

1. The Executive Secretary is obliged to notify the parties on the time and place of conducting arbitral proceedings.

2. Copies of all documents, materials and information, submitted by a party during the arbitral proceedings, are subject to be communicated to the other party by the Executive Secretary within 5 (five) business days from the date of receiving them in the Arbitration Center.

3. Arbitral proceedings are deemed to be commenced on the date of formation of the composition of arbitral tribunal.

#### Article 37. Preparation of the Case to the Arbitral Proceedings

1. Composition of arbitral proceedings shall, without calling the parties, within a period, not exceeding 10 (ten) calendar days from the date of making a decision by the

Secretary-General on formation of the composition of arbitral tribunal, prepare the case to arbitral proceedings in order to provide its timely and correct settlement.

2. Objectives of preparation of the case to arbitral proceedings are:

1) familiarization of the composition of the arbitral tribunal with the case materials;

2) clarification of circumstances that are significant for a correct settlement of the case;

3) determination of law relations and legislation to be guided by;

4) decision of the question on the composition of persons, participating in the case, and other participants of the arbitral proceedings;

5) determination of evidences, written explanations and other documents, which each of the parties must submit;

6) determination of the form of arbitral proceedings;

7) appointment of date, time, place and language of arbitral proceedings.

3. If a party (parties) is required to produce evidences, submit written explanations and other documents, a composition of arbitral proceedings shall render a determination indicating a list of necessary documents, which must be sent by express post to the Arbitration Center or submitted to the Executive Secretary on the first session of arbitral proceedings.

4. Presiding of the Arbitral Proceedings may issue certain commissions to the Executive Secretary, connected with the preparation of the case to the arbitral proceedings.

5. Composition of arbitral tribunal after familiarization with materials of the case must appoint time and place of arbitration upon agreement with the Executive Secretary. About time and place of arbitration the parties (persons, participating in the case) must be duly notified by the Executive Secretary.

#### Article 38. Participation of Parties and Persons in Arbitral Proceedings

1. Parties may participate in proceedings directly or through authorized representatives, appointed by each of the party at their own discretion. Authority of the representatives must be duly established.

2. Failure to appear of representatives of both parties is a basis to postpone the hearing for the next day, excluding the cases, when both of the parties make a motion to consider the case in their absence.

3. A party may request to conduct the hearing of the case in its absence. Any of the parties is eligible to make a motion to consider the case in its absence or about postponing the hearing on a reasonable excuse, evidences of which must be produced to the composition of arbitral tribunal at the same time with the motion.

4. Failure to appear to the session of arbitral proceedings by one of the parties or its representative, who was duly notified about the time and place of its conduction, shall not prevent arbitral proceedings from being commenced and an award from being made, if the excuse for non-appearance of the party to the session is deemed to be unreasonable by the composition of the arbitral tribunal.

5. If experts, witnesses, interpreters, who were duly notified about the time and place of conducting the arbitral proceedings fail to attend the proceedings, the arbitral tribunal shall render a determination about postponing the hearing of the case, if the parties have not filed a motion to consider the case in the absence of the referred persons.

Repeated non-appearance to the session of arbitral proceedings by experts, witnesses, interpreters, who were duly notified about the time and date of its conduction, shall not prevent arbitral proceedings from continuation and an award from being made.

6. Arbitral proceedings, all or part of the session on the case may be conducted by the agreement of parties on the basis of only written materials, without conducting oral hearings. Composition of arbitral tribunal is eligible to appoint an oral hearing, if the submitted materials appear to be insufficient to settle the dispute on the merits.

7. Arbitral proceedings, all or part of the sessions on the case may be conducted in online mode (with using communication technology in real time mode), i.e. without physical presence of the parties (their representatives) in the place of conducting arbitral proceedings. The sessions shall be conducted using a video conference communication or other software and hardware tools that enable the composition of the arbitral tribunal and parties to hear and see one another.

In this case the place of arbitration shall be a place of conducting the session (sessions) and a place of making an award, regardless the physical location of the arbitral tribunal and/or the parties.

Sessions in online mode shall be conducted upon the motion by the parties or upon the initiative of arbitral tribunal, which shall be specified in the determination or in arbitration award, without rendering a separate determination.

#### Article 39. Postponing of the Hearing and Suspense of Arbitral Proceedings

1. If so required, upon an initiative of the parties (a party) or a composition of arbitral tribunal, the hearing of the case may be postponed or its proceedings may be suspended.

2. A determination shall be rendered on postponing or suspense of the arbitral proceedings by the composition of arbitral tribunal. In this regard the composition of arbitral tribunal shall decide on the next date of hearing of the case, taking into account specific circumstances.

3. Where the arbitral proceedings are suspended, the total period of arbitral proceedings is subject to be extended for the period of suspense.

#### Article 40. Measures for Security of a Claim

1. Upon the application of any party prior to formation of the composition of arbitral tribunal, the Secretary-General of the Arbitration Center, and after its formation – the composition of arbitral tribunal may order to adopt measures by a party for security of a claim regarding the subject of a dispute, which he/she considers necessary, which shall be indicated in the corresponding decision awarded.

2. Application on security of a claim, attaching a determination of the arbitral tribunal on the adoption of measures for security, shall be filed by a party to the competent court at the place of arbitral proceedings or at the location of the property, regarding which the measures for security may be adopted.

3. In case, when one of the parties has filed an application to a competent court on adoption of measures for security of a claim, as well as when the competent court has rendered a determination on adoption of measure, the applicant party must inform the Executive Secretary about it in writing without delay attaching copies of determination of the competent court.

#### Article 41. Rights of the Parties

1. Parties, participating in the arbitral proceedings, are eligible to:

- 1) familiarize with materials of the case and make their copies;
- 2) produce evidences;
- 3) file a motion and challenge arbitrators;
- 4) question the participants of proceedings, give oral and written explanations;
- 5) present arguments on all emerging questions during the proceedings;
- 6) resist motions and arguments of the other party;
- 7) familiarize with minutes of the session of arbitral tribunal and make written comments on them;
- 8) appeal to a competent body of the country, where confession and enforcement of the award of arbitral tribunal is solicited;
- 9) file a complaint against an award of arbitral tribunal in cases, established by these Rules.

#### Article 42. Filing documents

1. All documents, concerning demanding for and conduction of arbitral proceedings, must be filed by parties in such a number of copies, so that each of the party, and each arbitrator had one copy, and one copy for the Arbitration Center.

2. The documents, referred to in paragraph 1 of this Article, shall be filed in the language of contract or in a language, in which the parties kept a correspondence, with certified translations into Kazakh or Russian languages.

3. Filing documents to the Arbitration Center by the parties to arbitral proceedings, as well as their following communication to the arbitrators shall be carried out via the Executive Secretary. When sending any document by the Executive Secretary to one of the parties, its copy shall be sent, if so required, to the other party.

4. During the arbitral proceedings addresses of parties are the addresses, indicated by parties in the Request for Arbitration (Response). The parties are obliged to notify the Executive Secretary without delay about changes of previously indicated addresses.

5. Any written notification is deemed to be received, if it has been delivered to the party personally, or has been delivered to its permanent address or postal address. If permanent address or postal address cannot be established by making possible inquires, a written message shall be deemed to be received, if it is sent to the last known

location by recorded delivery with return receipt or other ways, providing registration of an attempt to delivery of such message. Written message is deemed to be received on the day of such delivery.

6. Requests for Arbitration, Responses to claims, notifications, arbitration awards and determinations shall be sent by a recorded delivery with return receipt or shall be delivered by hand against signed receipt. All other documents and messages may be sent by ordinary mail, on facsimile, telegraph, electronic mail or other unprohibited means.

7. Non-filing of documents and other materials, including failure to appear on the session by one of the parties or their representatives, who were duly notified about time and place of conduction of arbitral proceedings, shall not prevent arbitral proceedings from being conducted on the basis of the filed materials and evidences and making an award by arbitral tribunal, if the excuse for non-filing of documents and other materials or failure to appear to a session by parties is recognized as unreasonable.

#### Article 43. Evidences

1. Parties are obliged to prove those circumstances, which they are referring to as a ground for their demands and objections.

2. Composition of arbitral tribunal is eligible to request any of the parties to produce evidences within the time limit, established by the arbitral tribunal. Composition of arbitral tribunal also may, at its own discretion, appoint production of expert examination and request producing evidences by third parties, as well as call and hear witnesses.

3. Composition of arbitral tribunal is eligible to dismiss the evidences, produced by parties, if they are irrelevant to the considered case.

4. Evidence shall be deemed to be relevant to the case, if it is represented by factual data, which confirm, dispose of or raise doubts on the conclusions about existence of circumstances, which are of significance for the case. Composition of arbitral tribunal is eligible to request from any of the parties other evidences, acceptable by applicable law, as well as written explanations of the parties, related to the subject of the dispute.

5. Written evidences must be produced in original or a copy. In case of emerging doubts in authenticity of copies, composition of arbitral tribunal is eligible to request from a party to produce an original of the evidence.

6. Arbitral tribunal upon its own initiative or upon motion from parties may appeal to a competent court with a request to assist in reception of evidences. A competent court shall consider this appeal in accordance with the legislation of the country, where the assistance in reception of evidences is requested.

7. Evaluation of evidences shall be conducted by arbitrators on their own inner conviction, based upon impartial, comprehensive and full consideration of evidences, as well as cumulative evidences, available in the case, being governed by applicable law and trade usages.

8. Composition of arbitral tribunal determines relevance, admissibility, reliability, materiality and significance of each evidence separately, as well as sufficiency and interconnection of cumulative evidences. No evidence has a predetermined force for the arbitral tribunal.

9. Non-producing of proper evidences by a party shall not prevent the composition of arbitral proceedings from continuing the proceedings and making an award on the basis of the available evidences.

#### Article 44. Participation of the Third Parties

1. Intervention of the third party to arbitral proceedings is allowed only with the consent of the parties to arbitral proceedings and provided that the third party is a participant of an arbitration agreement. In order to bring the third party into proceedings, except the consent of the parties, also the consent of the third party is required. Motion for bringing the third party into arbitral proceedings, as well as adding arbitration agreement with the participation of the third party is allowed only until the end of time limit to submit a Response to the Request for Arbitration. Consent to bringing the third party into proceedings must be presented in writing.

#### Article 45. Witnesses

1. Upon the motion of the parties, witnesses may be called to participate in arbitral proceedings. A party, filing the motion for the call of a witness, is obliged to indicate circumstances, that are of significance to the case, intended to be proved by the witness, inform his/her surname, name, patronymic name, language on which he/she will be bearing testimony, give reasons to the necessity of examination of the witness, as well as on their own account secure attendance of a witness to the session of the arbitral tribunal.

2. A witness may be any person, who knows any information on circumstances, which are of significance to the case. If the witness cannot indicate the source of the information he/she knows, his/her testimony shall not be deemed to be evidence.

3. Witnesses, who cannot appear at the place of arbitration due to illness, old age, disability or other reasonable excuses, may be examined at the place of their residence.

4. The following persons may not be examined as witnesses:

1) persons, who, due to their young age, physical or psychological disability, are not able to perceive the facts in a due manner and to give accurate testimony about them;

2) awarder or an arbitrator – on circumstances, which have come to his/her notice due to the performance of duties of an awarder or an arbitrator.

5. A witness is eligible to reimbursement of costs, related to calling to arbitration and to receiving monetary compensation for lost time. Application on reimbursement of cost, connected with calling to arbitral tribunal must be filed by a witness prior to the moment of withdrawal of judges to a conference room to make an award. Amount of costs and compensation shall be determined by the composition of arbitral tribunal.

6. A witness bears responsibility, established by law, for providing knowingly false testimony.

#### Article 46. Experts

1. In order to clarify the questions, emerging during the proceedings of the case, requiring special knowledge, the arbitral tribunal upon its own initiative or according to the motion by any of the parties may appoint an expertise of documents, items and other materials. Unless otherwise agreed by the parties to the arbitral proceedings, the arbitral tribunal may appoint one or several experts to report to it on specific questions.

2. Arbitral tribunal shall render a determination on the appointment of the expertise.

3. Report of the expert shall be submitted in writing and shall contain conclusions on questions, raised before the expert by the arbitral tribunal or the parties, based on examination of objects of expertise, conducted using special academic (scientific) knowledge.

4. The parties are obliged to provide the expert with any information or submit for his/her inspection any documents, goods or other property, related to the case.

5. The Executive Secretary shall send a copy of the expert's report to the parties within 5 (five) business days from the moment of receiving it. The parties are eligible to express their own opinion on the expert's report.

6. If a party requests or if the arbitral tribunal deems it necessary, the expert must participate in the hearing after submitting his/her written report, during which the parties are given an opportunity to question him/her and provide specialists to bear testimony on questionable matters.

Securing the attendance of an expert shall be the responsibility of the party, who has initiated the conduction of an expertise, and if the initiator of the expertise is an arbitral tribunal, securing the attendance of an expert shall be the responsibility of the Arbitration Center with the following allocation of costs in accordance with Articles 9 and 10 of the Rules.

7. Any of the parties is eligible to challenge the expert, appointed by the arbitral tribunal, if there are circumstances that give rise to justifiable doubts concerning his/her impartiality and independence from parties, or that he/she do not have necessary qualification. Challenge of an expert is conducted on the grounds, established in Article 30 of these Rules. Decision on the challenge of an expert shall be made by arbitral tribunal, and reasoned determination on such decision shall be rendered.

8. For providing knowingly false report, an expert bears responsibility, established by law.

9. Provisions, stated above shall also be applicable regarding an interpreter (interpreters).

#### Article 47. Minutes of Session

1. In compliance with these Rules, the arbitral tribunal may conduct the arbitral proceedings in such a way, which it deems appropriate, under the condition of equal

relation to the parties and providing each of them during the process with reasonable opportunity to state his/her position. If any of the parties requests to conduct a session with hearing the testimony of witnesses, experts, or oral debates, minutes shall be taken in this case.

2. The minutes of a session shall include:
  - 1) year, month, date, place, time of commencement and end of a session;
  - 2) name of the Arbitration Center, surnames and initials of arbitrators (an arbitrator) and the Executive Secretary (in cases, stated in Article 13 of the Rules: an employee of the Arbitration Center or regional subdivision of the Arbitration Center);
  - 3) name and number of the case;
  - 4) information on the attendance of persons, participating in the case, including witnesses, experts and interpreters;
  - 5) information on explanation of their procedural rights to the persons, participating in the case;
  - 6) awards, made by arbitral tribunal in the session hall;
  - 7) explanations of persons, participating in the case, their applications and motions, as well as a content of decisions, made according to them;
  - 8) testimony of witnesses and oral explanations of reports by experts;
  - 9) information on disclosure of documents, examination of physical evidences, listening to audio recordings and watching video recordings;
  - 10) content of questions and answers, which took place in the session hall;
  - 11) information on disclosure and explanation of the content of decisions, explanation of the procedure and time limit to challenge them;
  - 12) information on explanation to persons, participating in the case, their rights to familiarize with the minutes and making comments on them.

3. Minutes of the session must be drawn up and signed by a Presiding of the Arbitral Proceedings (a sole arbitrator), arbitrators and the Executive Secretary (in cases, stated in Article 13 of the Rules: by an employee of the Arbitration Center or regional subdivision of the Arbitration Center) not later than 5 (five) business days after the end of the session.

4. The parties are eligible to familiarize with the content of the minutes at the place of arbitration at any stage of considering the case and make written comments on it regarding completeness and correctness of the minutes. Persons, participating in the case, are eligible to file a motion for disclosure of any part of the minutes and recording in the minutes the information on circumstances, which they consider significant for the case.

5. The Executive Secretary is eligible to conduct a video or audio recording of the course of session, which is evidenced appropriately in the minutes of the session.

#### Article 48. Reconsideration of the Case

1. When submitting a Request for Arbitration by the Claimant to reconsider the case to the Arbitration Center, due to the cancellation of the award made earlier (its part) by a competent court, the arbitration fee is not subject to payment.

2. In case, provided for in the paragraph 1 of this Article of the Rules, the arbitral tribunal shall not be constituted. Arbitral proceedings are conducted by the same composition of arbitrators, which considered the case earlier.

3. Time limit for reconsideration of the case is one calendar month from the moment of receiving a repeated claim.

## Chapter VII. Making Arbitration Award and Termination of Arbitral Proceedings

### Article 49. Arbitration Award

1. Arbitral proceedings shall be terminated by making an arbitration award. Award shall be made in case of the settlement of the dispute or conclusion of settlement agreement, as well as in case of withdrawal of claims by the Claimant.

2. Award shall be made in a conference room by a majority of votes of the composition of arbitral tribunal.

3. An arbitrator, disagreeing with the award may state his/her individual opinion in writing, which shall be attached to the award.

4. Date of making award of the arbitral tribunal and its effective date is the date of its disclosure by a Presiding of the Arbitral Proceedings.

5. Arbitration award shall be made public by the Presiding of the Arbitral Proceedings during the session. Presiding of the Arbitration Proceedings may make public only resolute part of the award.

6. Arbitration award must be handed out against receipt or sent by an express mail to each of the parties in one copy within a period, not exceeding 10 (ten) business days from the moment of making an award by the arbitral tribunal.

7. Arbitration award shall be final. Parties may file a motion to a competent court for its cancellation only on the grounds and within time limits, established by the legislation.

### Article 50. Form and Content of Arbitration Award

1. Arbitration award shall be made in writing and signed by arbitrators, who are the members of the arbitral tribunal, including the arbitrators, who have individual opinion, written position of whom shall be an integral part of the award. Arbitration award shall consist of introduction, descriptive part, statement of reasons and resolute part.

2. The introduction of arbitration award shall contain: date on and place at which the award was made; name of the Arbitration Center; form and language of arbitral proceedings; composition of arbitral tribunal and procedure of its formation; full name of the Executive Secretary; names of the parties; other persons, participating in the arbitral proceedings, their representatives; justification of the competence of arbitral tribunal; subject of the dispute or stated claim.

3. Descriptive part of the award must contain an indication to the demand of the Claimant, answer of the Respondent and explanations of other persons, participating in the case.

4. Statement of reasons must contain an indication to circumstances of the case, evidences, established by arbitral tribunal, upon which the conclusions of arbitral tri-

bunal are based; arguments, according to which the arbitral tribunal is rejecting any evidences, and regulatory legal acts, by which it was governed when making an award. In case of acceptance of a claim by the Respondent, the statement of reasons may include only the acceptance of the claim and its adoption by arbitral tribunal.

5. Resolutive part of the award must contain conclusion of the arbitral tribunal on satisfaction or rejection of each claim submitted, amount of costs, related to the settlement of the dispute, allocation of the costs between the parties and if necessary, time limit and procedure for enforcement of the award.

#### Article 51. Settlement Agreement

1. If the parties during the arbitral proceedings settle the dispute by concluding a settlement agreement, arbitral tribunal shall terminate the proceedings and upon the request of the parties record the settlement in the form of a consent award. Arbitral tribunal is not obliged to reason such award.

2. Consent award must be made under the provisions of Article 50 of these Rules. Such arbitration award is subject to enforcement in the same manner as any other arbitration award on the merits.

#### Article 52. Termination of the Arbitral Proceedings

1. Arbitral tribunal shall render a determination on the termination of arbitral proceedings in the following cases:

1) the Claimant withdraws his/her claims and the withdrawal is accepted by the arbitral tribunal, if only the Respondent do not raise an objection to termination of the arbitral proceedings due to having legitimate interests in the settlement of the dispute on the merits;

2) settlement of the dispute is beyond the competence of the arbitral tribunal;

3) existence of a legally effective award made by a competent court or an arbitral tribunal, on the dispute between the same parties, on the same subject and on the same grounds;

4) the parties reached an agreement to terminate the arbitral proceedings;

5) a legal entity that is a party to arbitral proceedings has been abolished;

6) a physical person who is a party to the arbitral proceedings has died (presumed dead), or he/she has been declared missing;

7) the Claimant, who did not request on the proceeding of the case in his/her absence, has not been attending the proceedings more than 2 (two) calendar months from the moment of its commencement;

8) a party, within a period of more than 2 (two) calendar months from the moment of commencing of arbitral proceedings or the date of rendering a determination on the increase of arbitration fee, did not pay a part of the arbitration fee, to be charged according to Articles 3 and 5 of these Rules.

#### Article 53. Correction and Interpretation of an Award. Additional Award

1. Within 60 (sixty) calendar days after the receipt of an award, unless the parties have not agreed on another time limit:

1) any of the parties may, upon notice to the other party, request an arbitral tribunal to correct in the award any error in computation, clerical or typographical error or any error of a similar nature;

2) any of the parties may, upon notice to the other party, request an arbitral tribunal to provide an interpretation of a specific paragraph or a part of the award.

If the arbitral tribunal considers the request justified, it must make the respective corrections or provide interpretation within 30 (thirty) calendar days after the receipt of such notice. Interpretation of the arbitration award shall be an integral part of the arbitration award.

2. Arbitral tribunal may, within 60 (sixty) calendar days from the day of disclosure of arbitration award, correct any errors, referred to in subparagraph 1) of paragraph 1 of this Article upon its own initiative.

3. Unless otherwise agreed between the parties, within 60 (sixty) calendar days after the disclosure of the award, any of the parties may, upon notice to the other party, request the arbitral tribunal to make an additional award on claims presented in the arbitration, but not determined in the award. If arbitral tribunal considers the request justified, it shall make the additional award within 60 (sixty) calendar days after the receipt of such notice.

4. When deemed necessary arbitral tribunal may extend, but not more than 60 (sixty) calendar days, the time limit within which it shall correct errors, provide interpretation or make an additional award in accordance with paragraph 1 or 3 of this Article.

5. The parties shall not bear additional costs, related to corrections, interpretation, or making of an additional award.

#### Article 54. Enforcement of Arbitral Awards

1. Arbitration award is mandatory to be enforced according to the procedure and time limits established in the award.

2. If the time limit is not established in the arbitration award, it shall take effect immediately.

3. If the arbitration award is not enforced voluntarily within the time limit established by the award, the party in whose favor the arbitral decision was made, (recoverer) is eligible to appeal to the competent court of the country where the recognition and enforcement of this award is sought.

4. In the Republic of Kazakhstan awards of international arbitral tribunals, which were not enforced voluntarily within the established time limit, shall be enforced in accordance with the Law "On International Arbitration", and awards of domestic arbitration courts (arbitral tribunals) - in accordance with the Law "On arbitration courts" under the relevant provisions established by the Civil Procedure Code of the Republic of Kazakhstan.

5. Enforcement of arbitration awards shall be conducted under the rules of enforcement proceedings, in force at the time of enforcement of the award, on the basis of the order of enforcement issued by a competent court to enforce the award.

## Article 55. Acts of Arbitration Center and Arbitral Tribunal on Procedural and Other Questions

1. In all procedural questions the Secretary-General of the Arbitration Center, composition of arbitral tribunal (after its formation) in accordance with their authority established by these Rules, shall render relevant acts.

During the settlement of the dispute on the merits, an arbitration act shall be rendered in the form of an award, and in other cases – in the form of determination.

2. In the case of considering the dispute by collegiate composition of the arbitral tribunal, awards shall be made by majority of votes.

3. Arbitration award shall be made in writing and signed by arbitrators, who are members of composition of arbitral tribunal, in the case of a sole arbitration – by a sole arbitrator. In case if an arbitrator has an individual opinion, his/her written position shall be presented separately and shall be an integral part of the award.

## Article 56. Exclusion of Liability

1. Neither the Arbitration Center, nor the arbitrators shall be liable to any party for any act or omission in connection with any arbitral proceedings, except the cases where the arbitrators may be responsible for the consequences of willful and deliberate violation of these Rules and the applicable law.

2. After the award is made, and the possibility of correction and making additional awards expired or exhausted, neither the Arbitration Center, nor the arbitrators shall be obliged to make any statement to any person on any matter related to the arbitral proceedings.

## Article 57. Transitional Provisions

1. These Rules shall enter into force upon approval by the Administrative Council of the Arbitration Center.

In order to appeal to the Center of Arbitration of the National Chamber of Entrepreneurs of the Republic of Kazakhstan, the parties are advised to use the following **model arbitration clause**:

"Any dispute, controversy or claim arising out of this contract (agreement) or in connection with it shall be finally settled by the Center of Arbitration of the National Chamber of Entrepreneurs of the Republic of Kazakhstan in accordance with its current Rules. The award made by the arbitral tribunal shall be final."

If deemed necessary, it is recommended to make the following **additions to the arbitration clause**:

"The composition of the arbitral tribunal shall include \_\_\_\_\_ (one / three) arbitrators";

"The place of arbitral proceedings shall be \_\_\_\_\_";

"The language of the arbitral proceedings shall be \_\_\_\_\_."

"This contract (agreement) is governed by the norms of substantive law (legislation of the country) \_\_\_\_\_".

Note. If the parties wish to exclude recourse against the arbitral award that may be available under the applicable law, they may consider adding the following clause:

#### **Waiver**

"The parties hereby waive their right to any form of recourse against an award to any court or other competent authority insofar as such waiver can validly be made under the applicable law."

#### **Full name of the Arbitration Center:**

in state (Kazakh) language – «Қазақстан Республикасының Ұлттық кәсіпкерлер палатасының төрелікте және аралық сотта талқылау орталығы» жеке меншік мекемесі, short name – «ҚР ҰКП ТАСТО» ЖМ;

in Russian language – частное учреждение «Центр арбитражного и третейского разбирательства Национальной палаты предпринимателей Республики Казахстан», short name – ЧУ «ЦАТР НПП РК»;

in English language – «Center of Arbitration of the National Chamber of Entrepreneurs of the Republic of Kazakhstan» Private Institution, short name – «CA of the National Chamber of Entrepreneurs» PI.

Place of Arbitration Center: Republic of Kazakhstan, 010000, Astana, Esil district, D. Kunayev st., building 8, block "B"

**REGULATIONS**  
**on costs of arbitral proceedings**

Article 1. Terms Used in These Regulations

1. "Registration fee" is the amount of money paid by the Claimant when filing a Request for Arbitration to the Center of Arbitration of the National Chamber of Entrepreneurs of the Republic of Kazakhstan (the "Arbitration Center").

2. "Arbitration fee" is the amount of money paid by the Claimant for each Request filed to the Arbitration Center, to cover the total costs associated with the activities of the Arbitration Center (including the arbitrators' fees, repayment for employees of the Arbitration Center, the costs of organizational and material support of arbitral proceedings).

3. "Expenses" are the costs that the Arbitration Center and/or a party (parties) incur in connection with proceedings of a specific case (in particular: the amounts payable to experts and interpreters, and costs incurred by witnesses, costs for the services of representative; costs incurred by the arbitrators due to the inspection and examination of written and physical evidence at their location and other expenses).

Article 2. Registration Fee

1. Registration fee is determined at 60,000 (sixty thousand) tenge, excluding VAT. Registration fee is not refundable, including in the case of return of the arbitration fee or its part.

2. In cases of consideration of the cases in arbitral proceedings, the registration fee, if it does not contradict the legislation of the Republic of Kazakhstan, may be paid in US dollars or Euros at the official rate of the National Bank of Kazakhstan on the date of submitting the claim.

Article 3. Arbitration Fee

1. Arbitration fee shall be calculated according to the following scale, excluding VAT:

<b>Amount in dispute (tenge)</b>	<b>Arbitration fee (tenge)</b>
up to 5 000 000	60 000
from 5 000 001 to 500 000 000	60 000 +2 % on the amount above 5 000 000
from 500 000 001 to 1 000 000 000	9 960 000+1,9 % on the amount above 500 000 000
from 1 000 000 001 to 2 000 000 000	19 460 000 +1,5% on the amount above 1 000 000 000
from 2 000 000 001 to 3 000 000 000	34 460 000 +1,3% on the amount above 2 000 000 000
from 3 000 000 001 to 4 000 000 000	47 460 000 +1% on the amount above 3 000 000 000
from 4 000 000 001 to 5 000 000 000	57 460 000 +0,5% on the amount above 4 000 000 000
above 5 000 000 001	1,25%

2. Arbitration fee shall be paid by 100% advance payment, except in the case provided for in paragraph 4 of this Article.

3. Arbitration fee shall be paid in tenge. In case of the conversion of the amount in dispute from foreign currency into the Kazakh tenge, the exchange rate of the National Bank of Kazakhstan, established on the date of the submitting the claim, shall be used.

4. Prior to the formation of the composition of arbitral tribunal, the Secretary-General of the Arbitration Center (the “Secretary-General”) is eligible, based on the financial situation of a party, to consider and agree on payment of arbitration fee in parts, but the initial payment must be at least 50% of the amount payable, about which a decision shall be rendered.

The decision of the Secretary-General shall indicate the procedure and time limits of paying the remainder of the arbitration fee. In case of failure to perform (improper performance) by the Claimant of the mentioned decision, the arbitral proceedings shall be suspended.

#### Article 4. Reducing the Amount of Arbitration Fee

1. If the case is considered by a sole arbitrator, the arbitration fee shall be reduced by 15%.

2. If the Claimant submits an application on the return of the Request for Arbitration prior to the formation of the composition of arbitrators, the arbitration fee shall be reduced by 75%.

3. If the Claimant submits an application for returning of the Request for Arbitration prior to the date of the first hearing, the arbitration fee shall be reduced by 40%.

4. Taking into account the amount in dispute, the complexity of the case or a significant reduction in time spent and expenses of the arbitrators related to the arbitral proceedings, the composition of the arbitral tribunal may reduce the amount of the arbitration fee.

5. In case of termination of the arbitral proceedings prior to the formation of the composition of arbitrators, a decision on the reduction of the arbitration fee shall be taken by the Secretary-General.

6. In case of the reduction of the amount of stated claims, the amount of the arbitration fee is not subject to revision.

In cases, not expressly regulated by these Regulations, the arbitration fee is not refundable.

#### Article 5. Increasing the Amount of Arbitration Fee

1. The Claimant is obliged to make additional payment of the amount of arbitration fee in the following cases:

1) increase in the stated claims during the process of the arbitral proceedings;

2) if the Claimant has not determined or determined improperly the amount in dispute, and the amount in dispute has been determined by the composition of the arbitrators on the basis of available data;

3) if at the moment of submitting the Request for Arbitration the Claimant had difficulties in determining the amount in dispute, which subsequently was determined by the composition of the arbitrators.

2. Taking into account the complexity of the case, significantly increased time spent and expenses of the arbitrators related to the arbitral proceedings, the composition of arbitrators may increase the amount of the arbitration fee.

3. Determination shall be rendered on the increase in the amount of the arbitration fee and the time limits for its payment.

In case of non-payment of an additional amount of the arbitration fee by the Claimant within the time limits specified in the determination, the arbitration shall be suspended.

#### Article 6. Arbitration Fee for Counterclaim or Placing Demand on Offset

For a counterclaim and demand, placed on offset, the same rules on arbitration fee that are applicable for the initial claim shall apply.

#### Article 7. Allocation of Arbitration Fee between the Parties

1. Unless otherwise provided by the parties, the arbitration fee is imposed on the party against which the award of the arbitration (arbitral tribunal) was made.

2. If the claim is satisfied in part, the arbitration fee is imposed on the Respondent in proportion to the amount of satisfied claim and on the Claimant in proportion to the part of the claim, satisfaction of which was dismissed.

#### Article 8. Covering Expenses

1. Composition of the arbitrators may impose on the parties or one of them the obligation to pay the expenses of the arbitration.

2. Payment of expenses shall be made by the party who has applied for the need for such action, if such an application is deemed justified. In this case, time limits of payment of expenses are determined by the composition of arbitrators.

3. In the case of participation in the proceedings of the elected by a party arbitrator, whose permanent residence is outside the place of conducting the sessions of the composition of arbitrators, the party shall pay an advance to cover the costs of his/her participation in the arbitral proceedings (travel, accommodation, etc.). In case, if such person is elected as a Presiding of arbitrators, the advance payment to cover the costs of his/her participation in the arbitral proceedings shall be made by each of the parties in equal parts. In case of non-payment by the Respondent of an appropriate advance payment by the established date, such advance payment shall be imposed on the Claimant.

4. The allocation of costs between the parties shall be conducted in accordance with the rules of Article 7 of these Regulations.

#### Article 9. Procedure for Payment of Costs of Arbitration

1. The amount of the arbitration costs payable in accordance with these Regulations shall be considered paid on the date they are credited to the account of the Arbitration Center.

2. The commission costs for bank transfer of the amount of arbitration costs to be paid in favor of the Arbitration Center, shall be imposed on the party, conducting the corresponding payment.

#### Article 10. Costs of Payment for the Assistance of Representative

1. Costs of payment for the assistance of representative are the costs of arbitral proceedings.

2. The composition of arbitrators shall award to the party, in whose favor the arbitration award was made, reimbursement of expenses incurred by the other party to pay for assistance of representatives who participated in the process of arbitration. By monetary requirements, these costs should not exceed ten percent of the satisfied part of the claim.

#### Article 11. Costs of Payment for the Services of Arbitrators

1. The amount of the arbitrators' fees shall be reasonable taking into account the disputed sum, the complexity of the subject matter, the time spent by the arbitrators and other relevant circumstances. The amount of the fee shall not exceed 35% of the amount of the arbitration fee.

2. In case of exceeding of the established amount of the fee the Secretary-General is entitled to make the necessary amendments, which are binding on the composition of arbitrators.

#### Article 12. A Different Allocation of Arbitration Costs and Fees

Taking into account the circumstances of a specific case, the Secretary-General upon the recommendation by the composition of arbitrators may establish other allocation between the parties of the arbitration of fees and expenses, than that provided for in Articles 7-8 and 10 of these Regulations, in particular, to collect in favor of one party from the other party unwanted expenses incurred by the former, caused by unreasonable or unfair actions of the latter, including the actions that caused an unjustified increase of the period of the arbitral proceedings.

**Statement of independence of an arbitrator**

*(In case of absence of circumstances to disclose)*

I am impartial and independent of each of the parties and intend to remain so. To the best of my knowledge, there are no circumstances, past or present, likely to give rise to justifiable doubts as to my impartiality or independence. I shall promptly notify \_\_\_\_\_ (indicate the names of the parties), composition of arbitral tribunal, the Secretary-General of any such circumstances that may subsequently come to my attention during the arbitral proceedings on the claim \_\_\_\_\_ (indicate name of the Claimant and subject of the claim) to \_\_\_\_\_ (indicate the name of the Respondent).

I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this arbitral proceedings diligently, efficiently and in accordance with the time limits established by the Rules of the Arbitration Center of the National Chamber of Entrepreneurs.

*(In case of presence of circumstances to disclose)*

I am impartial and independent of each of the parties and intend to remain so. Attached is a statement made pursuant to article 23 of the Rules of the Arbitration Center of the National Chamber of Entrepreneurs (attach a statement) of:

- 1) my past and present professional, business and other relationships with \_\_\_\_\_ (indicate the names of the parties);
- 2) any other relevant circumstances.

I confirm that those circumstances do not affect my independence and impartiality. I shall promptly notify \_\_\_\_\_ (indicate the names of the parties) composition of the arbitral tribunal, the Secretary-General of any such further relationships or circumstances that may subsequently come to my attention during the arbitral proceedings on the claim \_\_\_\_\_ (indicate name of the Claimant and subject of the claim) to \_\_\_\_\_ (indicate the name of the Respondent).

I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this arbitral proceedings diligently, efficiently and in accordance with the time limits established by the Rules of the Arbitration Center of the National Chamber of Entrepreneurs.