

## ANNEX 20A : MODEL RULES OF PROCEDURE

### *Application*

1. These Rules are established under Article 20.9 and shall apply to dispute settlement proceedings under Chapter 20 (Dispute Settlement) unless the Parties otherwise agree.

### *Definitions*

2. For the purposes of this Annex:

**complaining Party** means a Party that requests the establishment of a panel under Article 20.6;

**arbitral panel** means an arbitral panel established under Article 20.7; and

3. Any reference made in these Rules to an Article, is a reference to the appropriate Article in Chapter 20 (Dispute Settlement) .

### *Terms of Reference for Panels*

4. Unless the Parties otherwise agree within twenty (20) days from the date of receipt of the request for the establishment of a panel, the terms of reference shall be:

"To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitral panel, pursuant to Article 20.6, to make findings of law and/or fact together with the reasons thereof as well as recommendations, if any, on the means to resolve the dispute, and deliver the written reports referred to in Articles 20.11 and 20.12."

5. The Parties shall promptly deliver the agreed terms of reference to the panel, upon the designation of the last member of the panel.

6. If the complaining Party argues that a matter has nullified or impaired benefits, the terms of reference shall so indicate.

***Written Submissions and Other Documents***

7. Each Party shall deliver no less than four copies of its written submission to the panel and a copy to the other Party.

8. A complaining Party shall deliver its initial written submission to the Party complained against no later than ten (10) days after the date on which the last panelist is appointed. The Party complained against shall deliver its written submission to the complaining Party no later than twenty (20) days upon receipt of the initial written submission of the complaining Party.

9. In respect of a request, notice or other document(s) related to the panel proceedings that is not covered by paragraphs 7 or 8, each Party shall deliver copies of the document(s) to the other Party by facsimile, email or other means of electronic transmission.

10. A Party may at any time correct minor errors of a clerical nature in any request, notice, written submission or other document(s) related to the panel proceedings by delivering a new document clearly indicating the changes.

***Operation of Panels***

11. The chair of the panel shall preside at all of its meetings. A panel may delegate to the chair authority to make administrative and procedural decisions.

12. Except as otherwise provided in these Rules, the panel may conduct its business by any means, including by telephone, facsimile transmission and computer links.

13. Only members of the panel may take part in the deliberations of the panel, but the panel may in consultation with the Parties employ such number of assistants, interpreters or translators, or court reporters (designated note takers) as may be required for the proceedings and permit them to be present during such deliberations. The

members of the panel and the persons employed by the panel shall maintain the confidentiality of the panel's proceedings unless such information is already made available to the public.

14. Where a procedural question arises that is not addressed by these Rules, a panel may adopt an appropriate procedure that is consistent with this Agreement.

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

16. A panel may, in consultation with the Parties, modify any time-period applicable in the panel proceedings and make other procedural or administrative adjustments as may be required in the proceedings.

### ***Hearings***

17. The chair of the panel shall fix the date and time of the hearing in consultation with the Parties and the other members of the panel, and then notify the Parties in writing of the date, time and location of the hearing.

18. The venue for the proceedings of the panel shall be decided by mutual agreement between the Parties. If there is no agreement, the venue shall alternate between the territories of the Parties with the venue of the first sitting to be in the territory of the complaining Party.

19. The hearing shall be conducted by the panel in a manner ensuring that the complaining Party and the Party complained against are afforded equal time for arguments, replies and counter-replies.

### ***Decisions of the Panel***

20. The panel shall take its decisions by consensus; provided that where a panel is unable to reach consensus it may take its decisions by majority vote.

### ***Availability of Information***

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

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

#### ***Remuneration and Payment of Expenses***

22. The panel shall keep a record and render a final account of all general expenses incurred in connection with the proceedings, including those paid to their assistants, court reporters (designated note takers) or other individuals that it retains in a panel proceeding in consultation with the Parties.