

## **Disputes Board**

### **Rules and Procedures**

1. A Board may constitute one or three Members. The Board Members are independent of all parties to the agreement. Except for providing the services required hereunder, the Board Members shall not give any advice to any party.
2. The relationship of the Board shall be strictly confined to advice and recommendations as set out hereunder and does not permit any other form of relationship with any party to the agreement without having prior written consent of the remaining Members of the Board, where applicable, and all the parties to the agreement.
3. The Board Members:
  - (a) shall have no financial interest, which an impartial observer would consider as giving an impression of lack of impartiality, in any contracts, agreements, corporations, joint-ventures or any other activity of a party to the agreement except for payment for services on the Board;
  - (b) shall have disclosed in writing to all parties prior to appointment to the Board any and all previous relationships whether paid or voluntary to, or financial interests to, any party to the agreement;
  - (c) shall have disclosed in writing to all parties prior to appointment to the Board any and all recent or close professional or personal relationships with any director, officer, or employee of any party to this Undertaking as far as could be reasonably ascertained;
  - (d) shall have no close professional or personal relationships with any director, officer, or employee of any party to this Undertaking during the duration of the agreement.
  - (e) shall not, while a Board Member, be involved in any of the activities described above without the prior written consent of all the parties and the other Board Members, where applicable;
  - (f) shall not, while a Board Member, engage in discussion or make any arrangement of any nature whether financial or otherwise with any party to the agreement regarding any of the activities described in 2(a); 2(b); 2 (c) or 2 (d) whether as a consultant or otherwise either after the completion of the agreement or after service as a Board Member is completed;
  - (g) shall be and remain impartial and independent of the parties and shall disclose in writing to all parties, and to other Board members any fact or circumstance that might cause any party to the agreement to question the continued

existence of the impartiality and independence required of all or any of the Board Members; and

(h) shall be fluent in the language of the agreement.

4. Except for its participation in the Board's activities as provided in the agreement and in this Undertaking no person representing any party to the agreement shall solicit advice or consultation from the Board or the Board Members on matters dealing with the agreement.

5. The Disputing Party shall:

(a) Provide to each Board Member one copy of all documents that the Board may request including such documents pertinent to the performance of the agreement.

(b) In cooperation with the other parties, coordinate such visits of the Board, where applicable, including conference facilities, and secretarial and copying services.

6 The Board shall begin its regular activities following the signing of a Board Member's Declaration of Undertaking, or where applicable by all three Board Members, and it shall terminate these activities as set forth below:

(a) The Board shall suspend its regular activities when the Board has communicated to the parties its Recommendations on all disputes previously referred to it.

(b) Once the Board has suspend its regular activities as provided by the previous paragraph, the Board shall remain available to process any dispute referred to it by any party until the termination of the agreement. In case of such a referral, the Board Members shall receive payments as provided in paragraphs 7 (a) (ii), (iii), and (iv).

7 The Board may decide to seek independent expert advice on a particular specialized issue or issues to assist the Board in reaching a Recommendation, and the cost of obtaining any such expert advice shall be shared equally by the parties in accordance with the procedure specified in paragraph 8 (d) below.

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8. Payments to the Board Members for their services shall be governed by the following provisions:

- (a) Each Board Member will receive payments as follows:
  - (i) A retainer fee per calendar month equivalent to three times the daily fee established from time to time for arbitrators under the Administrative and Financial Regulations of the International Centre for Settlement of Investment Disputes (the ICSID Arbitrator's Daily Fee), or such other retainer as the parties may agree in writing. The fee shall be payable on the first day of each calendar month. This retainer shall be considered as payment in full for:
    - (a) Being available, on seven days' notice, for all hearings, visits, and other meetings of the Board.
    - (b) Being conversant with all project developments as is reasonably feasible and regular communications as to the resolutions, minutes and additional relevant information relating to the agreement and maintaining relevant files.
    - (c) All office and overhead expenses such as secretarial services, photocopying, and office supplies, not including telephone calls, faxes, and other methods of telecommunication, incurred in connection with the duties as a Board Member.
    - (d) All services performed hereunder except those performed during the days referred to in paragraph (ii) below.
  - (ii) A daily fee equivalent to the ICSID Arbitrator's Daily Fee or such other daily fee as the parties may agree in writing. This daily fee shall only be payable in respect of the days described as below and shall be considered as payment in full for:
    - (A) Each day up to a maximum of two days of travel time in each direction for the journey between the Board Member's home and the location of a Board meeting.
    - (B) Each day on the locations of Board meetings.
  - (iii) Expenses. In addition to the above, all reasonable and necessary travel expenses, including business class air fare, subsistence, and other direct travel expenses as well as the cost of telephone calls, faxes, and other methods of telecommunication incurred in connection with the duties as Board Member shall be reimbursed against invoices.

- (iv) Full untaxed reimbursement of any and all taxes that may be levied in the State of the location, where applicable, by the State of the location on payments made to the Board Member, other than payments made to a national or permanent resident of the country of the location pursuant to paragraph 8.
- (b) The retainer and fees shall remain fixed for the period of each Board Member's term, unless the term exceeds 3 years when a renegotiation of the daily rates shall be permitted.
- (c) Where an agreement has a natural end to its duration, as when its main function has been completed, then starting on the first period after that completion has taken place, the Board Members shall receive only one-third of the monthly retainer fee. After the Board has terminated its regular activities pursuant to paragraph 6(a) above, the Board members shall no longer receive any monthly retainer fee.
- (d) Liability for payments to the Members of the Board shall be shared equally by the parties. Members' invoices shall be paid within 30 calendar days after receipt of such invoices
- (e) Failure of any of the parties to make payment in accordance with this Undertaking shall constitute an event of default under the agreement, entitling the Board to bring an end to its mandate.
- (f) Notwithstanding such default the remaining parties may pay whatever amount may be required to make up the default in order to finance the operation of the Board. The party or parties making such payments shall be entitled to reimbursement of all sums paid in excess of the amount which would be otherwise due from that party under this Undertaking plus all costs of obtaining such sums.

9 Board Visits:

- (a) The Board shall visit the location, where appropriate, and meet with representatives of the parties at regular intervals, at times of critical events, at the written request of any party, and in any case not less than three times in any period of 12 months unless varied by agreement of all the parties in writing. The timing of the visits shall be as agreed among the parties, but failing agreement shall be fixed by the Board.
- (b) Such visits shall include an informal discussion of the status of the agreement, an inspection, where appropriate, and the review of any Requests for Recommendation made in accordance with paragraph 10 below. Such visits shall be attended by personnel from the parties.

- (c) At the conclusion of each visit, the Board shall prepare a report covering its activities during the visit and shall send signed copies to the parties.

10. Procedure for Dispute Referral to the Board:

- (a) If any party objects to any action or inaction of any other party, arising from or relating to the agreement, the objecting party may file a written Notice of Dispute to the other parties stating clearly and in detail the basis of the dispute.
- (b) The parties receiving the Notice of Dispute will consider it and respond in writing within 14 working days after receipt, the Response.
- (c) This Response shall be final and conclusive on the subject, unless a written reply to the Response is submitted within 7 days after receiving the Response, the Reply. Thereafter communications on the dispute will be closed. All parties are encouraged to discuss the matter further to attempt to settle the dispute amicably.
- (d) When it appears that the dispute cannot be resolved without the assistance of the Board, or if any of the parties receiving the Notice of Dispute fails to provide a written response, the Response, within 14 days after receipt of such Notice, any party may refer the dispute to the Board by written Request for Recommendation to the Board. The Request shall identify the dispute and shall be addressed to the Chairman of the Board, where applicable, with copies to the other Board Members, where applicable, and the other parties.
- (e) The Request for Recommendation shall state clearly and in full detail the specific issues of the dispute to be considered by the Board.
- (f) When a dispute is referred to the Board, and the Board is satisfied that the dispute requires the Board's assistance, the Board shall decide when to conduct a hearing on the dispute. The Board may request that written documentation and arguments from both parties be submitted to each Board Member before the hearing begins. The parties shall submit insofar as possible agreed statements of the relevant facts.
- (g) During the hearing, the parties shall each have sufficient opportunity to be heard and to offer evidence. The Board's Recommendations for resolution of the dispute will be given in writing to the parties as soon as possible, and in any event not less than 56 days after receipt by the Chairman of the Board of the written Request for Recommendation.

11. Conduct of Hearings:

- (a) Normally hearings will be conducted at the main location, where applicable, but any location that would be more convenient and still provide all required facilities and access to necessary documentation may be utilized by the Board. Deliberative meetings of the Board may be held at any cost-effective location convenient to the Board or by any approved means of telecommunication, for example video conference.
- (b) The parties shall be given the opportunity to have representatives at all hearings.
- (c) During the open hearings, no Board Member shall express any opinion concerning the merit of the respective arguments of the parties.
- (d) After the hearings are concluded, the Board shall meet privately to formulate its Recommendations. All Board deliberations shall be conducted in private, with all Members' individual views kept strictly confidential. The Board's Recommendations, together with an explanation of its reasoning, shall be submitted in writing to the parties. The Recommendations shall be based on any pertinent provisions of the agreement, applicable laws and regulations, and the facts and circumstances involved in the dispute together with any other criteria required to be taken into account by the agreement. .
- (e) The Board shall make every effort to reach a unanimous Recommendation. If this proves impossible, the majority of the Board, where applicable, shall decide, and the dissenting Member, where applicable, may prepare a written minority report for submission to the parties.

12. In all procedural matters, including the provision of documents and arguments relating to disputes, site visits, and conduct of hearings, the Board shall have full and final authority. If a unanimous decision on any such matter proves impossible, the majority of the Board, where applicable, shall decide.

13. After having been selected and, where necessary, approved, each Board Member shall sign sufficient originals of the following Undertaking and make one original available to each of the parties:

BOARD MEMBER'S UNDERTAKING OF ACCEPTANCE

WHEREAS:

- (a) an agreement for the \_\_\_\_\_ project has been signed on \_\_\_\_\_ between \_\_\_\_\_ Party A and \_\_\_\_\_ Party B and any other parties \_\_\_\_\_ (Party C; D etc);
- (b) provision \_\_\_\_\_ of the agreement provides for, or the parties have agreed upon, the establishment and operation of a Disputes Board (the Board);
- (c) the undersigned has been selected (and where required, approved) to serve as a Board Member on said Board;

NOW THEREFORE, I, the undersigned Board Member, hereby undertake as follows:

- 1. I accept the selection as a Board Member and agree to serve on the Board and to be bound by the provision \_\_\_\_\_ of the agreement or the agreement of the parties dated and the Disputes Board's Rules and Procedures attached to this Undertaking.
- 2. With respect to paragraph 3 of said Disputes Board's Rules and Procedures, I declare
  - (a) that I have had no financial interest in any contracts, agreements, corporations, joint-ventures or any other activity of the kind referred to in subparagraph 3(a);
  - (b) that I have had no previous relationship whether paid or voluntary to, or financial interests in any party to the agreement of the kind referred to in subparagraph 3(b);
  - (c) that I have made to all parties any disclosures that may be required by subparagraphs 3(b) and 3(c).
  - (d) that I shall adhere to the obligations of sub-paragraph 3(d)

BOARD MEMBER

\_\_\_\_\_

\_\_\_\_\_ *[print name of Board Member]*

Date: \_\_\_\_\_

WITNESS

NAME OF WITNESS

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