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Ukrainian Chamber of Commerce and Industry  
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of Commerce and Industry No.24(6) of 25 October  
2012

**RULES**  
**OF THE MARITIME ARBITRATION**  
**COMMISSION**  
**AT THE UKRAINIAN CHAMBER OF**  
**COMMERCE AND INDUSTRY**

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## **SECTION I. GENERAL PROVISIONS**

### **§ 1. Maritime Arbitration Commission**

1. The Maritime Arbitration Commission at the Ukrainian Chamber of Commerce and Industry (hereinafter called the "MAC") is an independent permanent arbitration institution (third-party tribunal) operating under the Law of Ukraine On International Commercial Arbitration of February 24, 1994, the Statute on the Maritime Arbitration Commission at the Ukrainian Chamber of Commerce and Industry and these Rules.

2. The MAC has its own seal reproducing its name in Ukrainian and English languages and imaging an anchor and the scales of justice.

3. The MAC has its seat in Kyiv, Ukraine.

### **§ 2. Jurisdiction of the MAC**

#### **Article 1. Disputes that may be referred to the MAC for arbitration**

1. The MAC shall settle disputes arising out of contractual or other civil law relationships in the area of merchant shipping regardless of the fact whether the subjects of Ukrainian and foreign law or either exclusively of Ukrainian or of foreign law are the participants in such relationships. In particular, the MAC shall settle disputes arising out of relationships concerning the following matters:

- the affreightment of vessels, the carriage of goods by sea and the carriage of goods in mixed navigation (river-sea);
- the marine towage of vessels or other floating objects;
- marine insurance and reinsurance;
- the sale and purchase, mortgage and repairs of seagoing vessels and other floating objects;
- the pilotage, escorting through ice, agency or other servicing of seagoing vessels, as well as vessels engaged in inland navigation insofar as the relevant operations are connected with the sailing of such vessels on sea routes;
- the use of vessels for scientific research, extraction of minerals, hydrotechnical or other work;
- the salvage of seagoing vessels or vessels involved in inland navigation;
- the raising of vessels and other property sunk in sea waters;
- a collision between seagoing vessels, or between vessels engaged in inland navigation in sea waters, as well as damage caused by a vessel to port structures, navigational aids or other objects;
- the damage to fishing nets or other fishing gear, as well as injury sustained in the conduct of fishing at sea.

The MAC shall also settle disputes arising in connection with the sailing of seagoing vessels and vessels engaged in inland navigation on international rivers in the instances specified in this article, and also disputes arising in connection with the transportation of cargoes of foreign countries by vessels engaged in inland navigation.

The MAC shall accept disputes for arbitration subject to the jurisdiction thereof by virtue of international agreements.

#### **Article 2. Legal grounds for referring disputes to the MAC for arbitration**

1. The MAC shall accept for arbitration disputes subject to an agreement in writing between the parties to refer to the MAC all or certain disputes that have arisen or may arise between them in respect of a defined legal relationship, whether contractual or not.

An arbitration agreement may be in the form of arbitration clause in a contract or in the form of a separate agreement.

The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams, fax messages or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

The arbitration clause, which forms part of a contract, shall be treated as an agreement independent of the other terms of the contract. A decision by the Arbitral Tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

2. The issue of availability of legal grounds for referring of a concrete dispute to the MAC for arbitration shall be decided by the President of the MAC. If it is obvious that the MAC does not have jurisdiction to settle such dispute, the filed Statement of Claim with enclosed documents shall be returned to the Claimant without initiation of the proceedings.

### **Article 3. Pleas as to the MAC jurisdiction**

1. The issue of MAC jurisdiction in a particular case shall be decided by the Arbitral Tribunal examining the case.

2. A plea that the MAC does not have jurisdiction shall be raised not later than the submission of the Statement of Defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator.

A plea that the MAC is exceeding the scope of its jurisdiction shall be raised as soon as the matter alleged to be beyond the scope of its jurisdiction is raised during the arbitral proceedings.

3. The Arbitral Tribunal may rule on a plea referred to in item 2 of this article either as a preliminary question or in an award on the merits. If the Arbitral Tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the Schevchenkovskiy District Court of Kiev to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the Arbitral Tribunal may continue the arbitral proceedings and make an award.

### **Article 4. Determination of the amount and the form of the security for the claim**

1. The President of the MAC may, at the request of a party, if he considers the request to be justified, determine the amount and the form of the security for the claim and, in particular, may issue an order to attach the other party's vessel or cargo in the Ukrainian port.

2. The Order of the MAC for determination of the amount and the form of the security for the claim shall be binding for the parties and shall be in force until a final arbitral award will be made.

3. It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a competent state court an interim measure of protection and for this court to grant such measure.

## **SECTION II. ORGANIZATION OF THE MAC**

### **Article 5. Arbitrators**

1. Arbitrators can be persons appointed by the parties in accordance with these Rules, or persons appointed by the President of the Ukrainian Chamber of Commerce and Industry.

2. The Presidium of the Ukrainian Chamber of Commerce and Industry shall approve, on the proposal of the MAC Presidium, the Recommendatory List of Arbitrators, to be in effect for a period of five years, which can include nationals of Ukraine, as well as nationals of other countries and persons of no nationality, possessing the requisite specialized knowledge in settling disputes within the jurisdiction of the MAC.

The Recommendatory List of Arbitrators shall contain the full name of the arbitrator, his habitual residence (town, country), education, specialty, academic degree and title, position, place of employment and other data as decided by the MAC Presidium.

### **Article 6. The MAC Presidium**

1. The MAC Presidium shall comprise *ex officio* of the President and two Vice Presidents of the MAC, and also of two members of the Presidium appointed by the Presidium of the Ukrainian Chamber of Commerce and Industry among persons of the Recommendatory List of Arbitrators for a period of five years. The President of the MAC shall act as Chairman of the MAC Presidium.

2. The MAC Presidium shall fulfill duties within its competence in accordance with these Rules; study arbitration practices and review opportunities for dissemination of information about the activities of the MAC, international links of the MAC, and other issues relating to the activities of the MAC.

The MAC Presidium shall submit to the Presidium of the Ukrainian Chamber of Commerce and Industry for approval the Recommendatory List of Arbitrators and proposals on amendments thereto.

3. Three members of the MAC Presidium constitute a quorum. The MAC Presidium shall adopt resolutions by a simple majority vote. In the event of vote parity, the Chairman of the Presidium shall have the decisive vote.

Resolutions of the MAC Presidium shall be formalized in minutes. The Chairman and the Secretary of the MAC Presidium shall sign the minutes.

4. As a matter of urgency, the MAC Presidium may adopt resolutions by polling the members thereof, with their responses recorded in the minutes.

5. The Secretary General of the MAC shall fulfill the duties of the Secretary of the MAC Presidium and shall attend meetings of the MAC Presidium with the right of a deliberative vote.

6. No members of the MAC Presidium shall speak out or vote on resolutions to be adopted by the MAC Presidium on arbitral proceedings in which they take part.

7. The MAC Presidium may delegate some of its duties to the MAC President.

### **Article 7. President and Vice Presidents of the MAC**

1. The MAC President and two Vice Presidents shall be appointed by the Presidium of the Ukrainian Chamber of Commerce and Industry for a period of five years.

2. The MAC President shall organize activities of the MAC; fulfill duties within its competence in accordance with these Rules; and act on behalf on the MAC in Ukraine and abroad.

3. The duties of the MAC Vice Presidents shall be specified by the MAC President. In the absence of the MAC President, the duties of his office shall be fulfilled by a Vice President as specified by the MAC President.

#### **Article 8. The MAC Secretariat**

1. The MAC Secretariat shall fulfill the duties necessary for the smooth functioning of the MAC in accordance with these Rules. All correspondence between the MAC and the parties involved in the arbitration shall proceed through the Secretariat.

The Secretariat shall be headed up by the Secretary General, who shall organize an office work and fulfill other duties within its competence in accordance with these Rules. In the absence of the Secretary General, the duties of his office shall be fulfilled by an employee as specified by the MAC President.

2. The Secretary General of the MAC shall be appointed by the President of the Ukrainian Chamber of Commerce and Industry on the proposal of the MAC Presidium. To be eligible for appointment as Secretary General of the MAC, a person is required to have a degree in law.

3. The MAC Secretariat shall be guided by the provisions of these Rules in fulfilling its duties and shall report to the MAC President.

4. In any case examined by the MAC, the MAC President may, having regard to the circumstances of a particular case, at the request of the Arbitral Tribunal, appoint a reporter from the employees of the MAC Secretariat, who shall take part in the meetings of the Arbitral Tribunal.

### **SECTION III. ARBITRATION PROCEDURE**

#### **§ 1. General provisions**

##### **Article 9. General principles of the arbitral proceedings**

1. The arbitral proceedings shall be conducted on an adversarial basis and on the principle of equality of the parties. The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

2. The parties may deal with the MAC and participate in the arbitral proceedings directly or through their duly authorized representatives.

3. The parties and their representatives shall make fair use of their procedural rights, refrain from abusing such rights, and observe the time limits designated for the exercise thereof.

##### **Article 10. Place of arbitration**

1. The place of arbitration shall be in Kyiv, Ukraine.

2. The parties may agree to hold hearings outside the MAC location. In this event, all additional expenses arising in connection with the hearings held outside Kyiv shall be borne by the parties to the dispute.

3. The Arbitral Tribunal may, subject to approval by the parties, meet outside the MAC location at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

##### **Article 11. Language of the arbitral proceedings**

1. The arbitral proceedings shall be conducted in Ukrainian or Russian languages.

2. The parties are free to agree on the language or languages to be used in the arbitral proceedings.

Failing such agreement, the MAC shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the MAC.

3. The MAC may order that any applications and documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the MAC.

4. The MAC may provide a party, at its request and for its account, with interpreting services for the oral hearings.

#### **Article 12. Confidentiality**

1. The President and Vice Presidents of the MAC, arbitrators and the MAC Secretariat shall refrain from disclosing information about disputes settled by the MAC, which they become aware.

#### **Article 13. Duration of the proceedings in a case**

1. If necessary, the MAC may extend the time-limits fixed by it for the performance by the parties of any procedural acts.

2. The duration of the proceedings in a case shall not exceed 6 months from the date of composition of the Arbitral Tribunal. If necessary, the MAC Presidium may, at the reasoned request of the Arbitral Tribunal or one of the parties, extend this period.

#### **Article 14. Applicable law**

1. The Arbitral Tribunal shall settle disputes in accordance with the rules of law, which the parties have chosen to apply to the subject matter of the dispute. Any reference to the law or the legal system of a country shall be interpreted as direct reference to the substantive law of such country, rather than to the conflict of laws rules thereof.

2. Failing such reference by the parties, the Arbitral Tribunal shall apply a law determined by the conflict of laws rules, which it deems appropriate.

3. The Arbitral Tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.

4. In all cases, the Arbitral Tribunal shall make decisions in accordance with the terms of the contract and shall take into account the merchant shipping usages and other trade usages applicable to their relationships.

#### **Article 15. Submission and forwarding of documents during arbitral proceedings**

1. All documents relating to the initiation and conduct of the arbitral proceedings shall be submitted by the parties to the MAC no less than in three copies. The number of copies shall increase where more than two parties are involved in the dispute.

2. All documents submitted by either of the parties to the MAC shall be forwarded by the MAC to the other party, unless these documents have been delivered by such party to the other party against receipt during the arbitral proceedings. Any reports prepared by experts or other documents classified as evidence on which an arbitral award may be based shall be transmitted to the parties as well.

3. The MAC Secretariat shall ensure that all documents in a case to be forwarded to the parties in time.

The MAC Secretariat shall maintain correspondence with the parties and shall mail the case documents to either of the parties at the addresses indicated by the party for the documents to be mailed to it or to the other party. The documents, sent or delivered to the representative of a party, shall be deemed sent or delivered by the said party.

The parties shall immediately notify the MAC of any changes in the addresses indicated previously.

4. The statements of claim, statements of defence, notices of the hearing, arbitral awards, orders or rulings shall be sent to the party by registered mail with an advice of delivery or by courier mail, as well as may be handed over personally to the representative of a party against receipt. The documents shall be sent by courier mail at the request of either of the parties and at its expense.

Other documents and communications may be sent by ordinary mail, by wire, fax, e-mail, or otherwise, provided that a record is made of the communication sent, and also may be handed over personally to the representative of a party against receipt.

5. Any written communication shall be deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it. The communication shall be deemed to have been received on the day it is so delivered.

#### **Article 16. Arbitration fees and costs**

1. The Claimant shall pay a registration fee upon submission of the Statement of Claim. The claim shall not be deemed to be filed till the registration fee is paid. The registration fee paid for the Statement of Claim is not refundable.

2. The Claimant shall pay the arbitration fee for each case accepted by the MAC. The registration fee, paid by the Claimant, shall constitute a part of the arbitration fee and shall be counted against the payment of the arbitration fee. The case shall stay without progress until the payment of the arbitration fee is made.

3. The violation of the manner and period of time fixed for the payment of the arbitration fee and compensation of the expenses of the MAC may result in the suspension or termination of the arbitral proceedings. In such cases an order for suspension or termination of the arbitral proceedings shall be issued by the President of the MAC.

4. The amount of the registration and arbitration fees, the manner of calculation, payment and apportionment of the arbitration fee between the parties, and the manner of payment of other arbitration expenses are specified in the Schedule of Arbitration Fees and Costs, which constitutes an integral part of these Rules (Appendix).

5. The Presidium of the Ukrainian Chamber of Commerce and Industry approves the Schedule of Arbitration Fees and Costs and the amount of the arbitrators' fees.

#### **§ 2. Initiation of the arbitration procedure**

##### **Article 17. Initiation of the proceedings in the case**

1. The proceedings in the case shall be initiated by the Order of the MAC President upon duly filing of a Statement of Claim with the MAC. The Claimant shall pay the

registration fee for a Statement of Claim in accordance with the Schedule of Arbitration Fees and Costs.

2. The filing date of the Statement of Claim shall be the date on which it is handed over to the MAC, or where the Statement of Claim is sent by mail it shall be the date of the postmark of the post office where it has been mailed.

3. If it becomes evident that the MAC does not have jurisdiction to consider the filed claim, it shall reject the Statement of Claim and return it to the Claimant within 10 days.

4. When the Claimant insists on the initiation of the arbitral proceedings and on forwarding of claim materials to the Respondent by referring to the existence of an agreement of the parties as to jurisdiction of the MAC, the MAC President may, without prejudging the issue of existence, validity or scope of the arbitration agreement, accept the case into consideration by the MAC. In that case the issue of the MAC jurisdiction shall be decided finally by the Arbitral Tribunal.

### **Article 18. Content of the Statement of Claim**

1. The Statement of Claim shall include:

- the name of the MAC;
- full names, postal addresses (in the language of the addressee's country or in the English language), telephone and fax numbers of the parties; bank details of the Claimant;
- amount of the claim;
- substantiation of the jurisdiction of the MAC;
- demands of the Claimant;
- a statement of the factual circumstances supporting the claim;
- evidence to confirm such circumstances;
- substantiation of the Claimant's demands with reference to the applicable law;
- calculation of the amounts to be recovered or disputed;
- a list of documents attached to the Statement of Claim.

2. The Claimant may refer in the Claimant of Claim to the documents or other evidence he will submit later on.

3. The Statement of Claim shall be signed by an authorized person and shall be accompanied by the documentary evidence of his powers.

4. Attached to the Statement of Claim are:

- copies of the Statement of Claim and attached to it documents for the Respondent(s) and the Arbitral Tribunal;
- evidence to confirm the circumstances, on which the claim is based;
- a proof of payment of the registration fee.

### **Article 19. Rectification of the Statement of Claim**

1. Where a Statement of Claim has been filed without adherence to the requirements of item 1 of Article 17 or Article 18 of these Rules, the MAC may propose to the Claimant to rectify the defects found within 30 days from the date on which such proposal is received.

2. Where a Statement of Claim contains demands arising out of several contracts, it shall be accepted for arbitration, provided that there is an arbitration agreement covering all such demands as well as the fulfilment of obligations under these contracts cannot be separated under several claims. Otherwise the MAC shall propose to the Claimant to separate his demands and to bring independent Statements of Claim under each contract.

3. While the rectification of the defects of the Statement of Claim is pending, the claim materials shall stay without progress. If the Claimant has not rectified these defects within a fixed period of time, the MAC shall terminate the arbitral proceedings.

#### **Article 20. Proposal to pay the arbitration fee and to appoint an arbitrator**

1. After receipt of a duly filed Statement of Claim, the Secretary General of the MAC shall send to the Claimant an order of the MAC President for initiation of the proceedings in the case, the Rules and the Recommendatory List of Arbitrators of the MAC, as well as shall communicate the amount of the arbitration fee to be paid by the Claimant on the account of the Ukrainian Chamber of Commerce and Industry within 30 days from receipt of the proposal.

If the Claimant fails to pay the arbitration fee within a period of 30 days from receipt of the proposal, the arbitral proceedings in the case shall be terminated.

2. Simultaneously, the Secretary General of the MAC shall propose to the Claimant to communicate to the MAC a full name of the arbitrator appointed by him or to present an evidence of taking measures to agree with the Respondent on the personality of a sole arbitrator, subject to provisions of the arbitration agreement, within the period specified in item 1 of this article.

#### **§ 3. Commencement of the arbitral proceedings**

##### **Article 21. Forwarding of claim materials to the Respondent**

1. Upon receipt of the duly filed Statement of Claim and after the full payment by the Claimant of the arbitration fee, the Secretary General of the MAC within 10 days shall send to the Respondent the copies of claim materials, the Rules and the Recommendatory List of Arbitrators of the MAC.

2. Simultaneously, the Secretary General of the MAC shall propose to the Respondent to communicate to the MAC a full name of the arbitrator appointed by him or agreed with the Claimant, subject to the provisions of the arbitration agreement, as well as to submit in three copies his written explanations (a Statement of Defence) and documents supporting his objections to the Claimant's demands within a period of 30 days after receipt of the claim materials.

3. At the request of the Respondent the above period of time for submission of the additional documents may be extended but not more than for one month.

##### **Article 22. Content of the Statement of Defence**

1. The Statement of Defence shall contain:

- a full name, postal address, telephone and fax numbers of the Respondent;
- an application in which the Respondent acknowledges, or objects to, the claims;
- a statement of the factual circumstances supporting the position of the Respondent;
- evidence to confirm such circumstances;
- substantiation of the position of the Respondent with reference to the applicable law; and
- a list of documents attached to the Statement of Defence.

2. The Statement of Defence shall be signed by an authorized person and accompanied by the documentary evidence of his powers.

### **Article 23. Forwarding of the Statement of Defence to the Claimant**

1. The Statement of Defence and any other statements, motions or documents submitted by the Respondent to the MAC shall be forwarded by the Secretary General of the MAC to the Claimant in order that he could comment on them.

### **Article 24. Counter-claim and Set-off**

1. Within the period of time specified in item 2 of Article 21 of these Rules the Respondent may present a counter-claim or a set-off statement, provided that there is an arbitration agreement covering such a claim or set-off along with the demands of the principal claim.

2. The counter-claim, which is to be interrelated with the principal claim, shall meet the same requirements as the principal claim. The provisions of Article 18 of these Rules shall apply to a counter-claim.

3. Where the arbitral proceedings are extended because of unjustified delay on the part of the Respondent in submitting his counter-claim or set-off, the Respondent may be required to cover the extra costs and expenses incurred by the MAC and the other party as a result of the delay.

The Arbitral Tribunal may disregard a counter-claim or a set-off statement in view of a delay in the settlement of the dispute.

### **Article 25. Discovery of additional documents and explanations**

1. The Secretary General of the MAC may request from the parties for additional documents or information concerning any written statements submitted by them.

2. If a party fails to submit the requested information (in particular, regarding the correct Respondent's postal address) or documents, the MAC President may terminate the arbitral proceedings.

## **§ 4. The Arbitral Tribunal**

### **Article 26. Number of arbitrators**

1. The parties are free to determine the number of arbitrators, including a sole arbitrator. Failing such agreement of the parties, three arbitrators shall be appointed. A sole arbitrator or a panel of arbitrators, considering the case, irrespective of their number shall be called the Arbitral Tribunal for the period of proceedings.

2. No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.

### **Article 27. Composition of the Arbitral Tribunal**

1. In accordance with these Rules the arbitrators shall be appointed by the parties or by the President of the Ukrainian Chamber of Commerce and Industry.

2. The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of these Rules.

Failing such agreement,

- in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator who will act as the presiding arbitrator; if a party fails to appoint the arbitrator within 30 days after receipt of a notice from the MAC, or if the two arbitrators fail to agree on the third arbitrator within 30 days of their appointment, an arbitrator shall be appointed by the President of

the Ukrainian Chamber of Commerce and Industry in accordance with Article 11(3) of the Law of Ukraine On International Commercial Arbitration;

- in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed by the President of the Ukrainian Chamber of Commerce and Industry in accordance with Article 11(3) of the Law of Ukraine On International Commercial Arbitration.

3. Where the Arbitral Tribunal is to be composed of three arbitrators to arbitrate between multiple claimants and multiple respondents, the multiple claimants and the multiple respondents shall each choose one arbitrator.

Where the claimants or respondents have not reached an agreement within 30 days after receipt of a notice from the MAC, an arbitrator shall be appointed by the President of the Ukrainian Chamber of Commerce and Industry.

#### **Article 28. Independence and impartiality of the arbitrators**

1. The arbitrators shall be independent and impartial in fulfilling their duties. None of them shall be a representative of either party to the dispute.

2. When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. The arbitrator shall give immediate notice to the MAC and to the parties of any such circumstance if he becomes aware of it during the arbitral proceedings.

3. A person assuming the duties of an arbitrator shall fill in and sign a declaration on a form to be approved by the MAC Presidium, stating his consent to assume and fulfill the duties of an arbitrator in accordance with the MAC Rules.

#### **Article 29. Appointment of an arbitrator by the President of the Ukrainian Chamber of Commerce and Industry**

1. The President of the Ukrainian Chamber of Commerce and Industry, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole arbitrator or a presiding arbitrator, shall take into account as well the advisability of appointing an arbitrator of nationality other than those of the parties.

2. The decisions of the President of the Ukrainian Chamber of Commerce and Industry rendered in accordance with items 2 and 3 of Article 27 of these Rules shall be subjects to no appeal.

#### **Article 30. Challenge of an arbitrator**

1. Either of the parties may challenge an arbitrator if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties.

A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

2. A party may send a written notice of challenge stating the reasons thereof to the MAC within 15 days after being notified of the composition of the arbitral tribunal, or having become aware of circumstances that can serve as a reason for challenge. Unless a party makes a challenge within the period of time referred to above he shall be deemed to have waived his right to challenge.

The MAC Secretariat must give to the other party an opportunity to comment on the challenge.

3. If the challenged arbitrator does not withdraw voluntarily or if the other party does not agree to the challenge, the decision on the release of the arbitrator from his appointment shall be made by the MAC Presidium.

The MAC Presidium may, in its discretion, make the decision on the release of the arbitrator from his appointment for reasons referred to in item 1 of this article.

When the MAC Presidium makes a decision to release from the appointment, it shall not be required to state reasons for its decision.

4. If a challenge is not successful, the challenging party may request, within 30 days after having received a notice of the decision rejecting the challenge, the President of the Ukrainian Chamber of Commerce and Industry to decide on the challenge, which decision shall be subject to no appeal. While such a request is pending, the Arbitral Tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

5. If an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any grounds referred to item 1 of this article.

6. The reasons referred to in item 1 of this article may be cited to challenge an expert or an interpreter participating in the proceedings. The decision on the release from the appointment shall be made by the Arbitral Tribunal during the hearing of the case.

#### **Article 31. Termination of an arbitrator's powers for other reasons**

1. Where an arbitrator is legally or actually incapable of fulfilling his duties, or does not, for any other reasons, fulfill such duties without unjustified delay, his powers may be terminated in response to his application for voluntary withdrawal or by agreement between the parties. The MAC Presidium also may, in its discretion, make a decision to terminate the powers of an arbitrator for above reasons.

2. If a controversy remains concerning any of these reasons, any party may request the President of the Ukrainian Chamber of Commerce and Industry to make a decision on the termination of the powers of an arbitrator. The decision of the President of the Ukrainian Chamber of Commerce and Industry shall be subject to no appeal.

3. Voluntary withdrawal of an arbitrator or consent of the parties to terminate his powers shall not signify recognition of any of the reasons referred to item 1 of this article.

#### **Article 32. Replacement of an arbitrator**

1. Where an arbitrator has declined to assume his duties, or has been challenged, or his powers have been terminated under Article 31 of these Rules, or he cannot participate in the proceedings in the case for any other reasons, a new arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

2. If the sole arbitrator is replaced, any hearings held previously shall be repeated.

In an arbitration with three arbitrators, the new arbitrator shall take over the arbitration proceedings at the point which they had reached on the termination of the previous arbitrator's powers. Were necessary, and having regard to the opinions of the parties, the new Arbitral Tribunal may return to the issues that were examined during the previous oral hearings in the case before the replacements.

3. Where the need for replacements in the Arbitral Tribunal arises after the closure of the hearings of the case, the MAC Presidium may, taking into account the opinions of the remaining members of the Arbitral Tribunal and of the parties, and also the circumstances of the case, make the decision to continue the arbitration with the remaining Arbitral Tribunal.

## **§ 5. Preparation of the case materials for arbitration**

### **Article 33. Verification of progress in preparation of the case materials for arbitration**

1. The Secretary General of the MAC shall provide for the preliminary preparation of the case materials for arbitration in accordance with paragraph 3 of these Rules.

2. The Arbitral Tribunal shall verify the progress in the preparation of the case materials for arbitration and, if it deems necessary, shall take further measures to have the case prepared, in particular, it shall order that written explanations, evidence, and other additional documents are to be requested from the parties. If further measures are taken to prepare the case, the Arbitral Tribunal or the Secretary General of the MAC according to its instructions shall set time limits for such measures to be carried out.

### **Article 34. Notice of the oral hearing**

1. The Secretary General of the MAC shall notify the parties of the time and place of the meeting of the Arbitral Tribunal and of the composition of the Arbitral Tribunal 30 days prior to the meeting.

This period may be reduced or extended by agreement between the parties.

2. Where further oral hearings are required, the Arbitral Tribunal shall set the dates thereof in view of the particular circumstances.

3. The parties shall be given sufficient advance notice of any hearing and of any meeting of the Arbitral Tribunal for the purposes of inspection of goods, other property or documents.

## **§ 6. Arbitral proceedings**

### **Article 35. Conducting of the arbitral proceedings**

1. Subject to the provisions of the Law of Ukraine On International Commercial Arbitration, the parties are free to agree on the procedure to be followed by the Arbitral Tribunal in conducting the proceedings.

Failing such agreement, the Arbitral Tribunal may, subject to the provisions of the Law of Ukraine On International Commercial Arbitration, conduct the arbitration in such manner, as it considers appropriate. The power conferred upon the Arbitral Tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

2. The matters of procedure may be settled by a presiding arbitrator, if so authorised by the members of the Arbitral Tribunal.

3. Subject to any contrary agreement by the parties, the Arbitral Tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials only. However, unless the parties have agreed that no hearings shall be held, the Arbitral Tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

### **Article 36. Waiver of the right to object**

1. Unless a party raises within the specified period of time or, where none is set, without unjustified delay, during the proceedings conducted at the MAC, an objection to the noncompliance with any provision of these Rules, the arbitration agreement, or any applicable rules of the law on international commercial arbitration, which may not have been complied with by the parties, such party shall be deemed to have waived his right to object.

### **Article 37. Oral hearing**

1. An oral hearing shall be held to allow the parties to present their case on the basis of the evidence submitted by them and the oral debate to be held. The hearing shall be held *in camera*. The Arbitral Tribunal may, with the consent of the parties, allow persons who do not participate in the arbitral proceedings to appear at the hearing.

2. The parties may participate in the arbitral proceedings directly or through their duly authorized representatives.

3. A party may request the hearing of the case to be held in his absence.

### **Article 38. Default of a party**

1. Unless otherwise agreed by the parties, if, without showing sufficient cause,  
- the Respondent fails to communicate his Statement of Defence, the Arbitral Tribunal shall continue the proceedings without treating such failure in itself as an admission of the Claimant's allegations;

- any party being properly notified of the time and place of the hearing fails to appear at the hearing or to produce documentary evidence, the Arbitral Tribunal may continue the proceedings and make the award on the evidence before it.

### **Article 39. Proceedings on the basis of written materials**

1. The parties may agree on arbitration of their dispute to be conducted on the basis of written materials only, without holding an oral hearing.

2. The Arbitral Tribunal may settle the dispute on the basis of written documents in the absence of agreement between the parties to this effect, if neither of the parties requests an oral hearing to be held.

### **Article 40. Amendments or supplements to the Statement of Claim or Statement of Defence**

1. In the course of the arbitral proceedings either party without unjustified delay may, before the termination of the case hearing, amend or supplement its claim or explanations thereof, provided that there is an arbitration agreement covering such amendment or supplement.

2. When the Claimant increases the amount of the claims, he shall pay the additional sum of the arbitration fee, calculated from a new amount of the claim. If the Claimant fails to do it, his application for increase in the amount of the claim shall be disregarded.

3. The Arbitral Tribunal may set a period of time for the parties to submit their written statements and evidence for either party to be familiarized in advance with the documents and materials submitted by the other party before the oral hearing.

4. If the Arbitral Tribunal finds the delay caused by either party to amend or supplement his claim or explanation thereof unjustified, it may impose on such party a

payment of the additional costs and expenses incurred by the other party as a result of the delay.

5. The Arbitral Tribunal may disregard such amendment or supplement to the claim or explanation thereof, in view of the delay caused.

#### **Article 41. Submission of documents**

1. All statements, documents or other information submitted by either party to the MAC Secretariat or to the Arbitral Tribunal during the hearing of the case shall be transmitted to the other party. Any reports prepared by experts or other documents classified as evidence on which an arbitral award may be based shall be transmitted to the parties as well.

2. The Arbitral Tribunal may disregard the documents submitted by the parties if it finds that these documents do not have any evidential force and any relation to the case.

#### **Article 42. Evidence**

1. The parties shall be required to prove the circumstances they rely upon in support to their claims or defence. The Arbitral Tribunal may require the parties to produce further evidence. It also may, in its discretion or at the request of either of the parties, order inspection by an expert, and also call and hear witnesses.

2. A party may submit written evidence in the original or as a certified copy of the original. If necessary, the Arbitral Tribunal may require the party to present the original of any document submitted by it in a copy.

3. The Arbitral Tribunal may require the parties to provide the translation of the evidence produced by them into the language of the arbitral proceedings.

4. The Arbitral Tribunal or a party with the approval of the Arbitral Tribunal may request from a competent court of this State assistance in taking evidence.

5. The arbitrators shall assess the evidence according to their sole discretion.

6. Failure by either party to submit appropriate evidence shall not prevent the Arbitral Tribunal from continuing the proceedings and making an award on the basis of available evidence.

#### **Article 43. Participation of a third party**

1. A third party may join in the arbitral proceedings only under the consent of the parties in dispute. Invitation of a third party to participate in the arbitration shall require, apart from the consent of the parties in dispute, the consent of the person invited. The consent of a third party to the invitation shall be in writing.

The invitation of a third party may only be requested before the end of the period for the Statement of Defence to be submitted.

#### **Article 44. Experts**

1. Unless otherwise agreed by the parties, the Arbitral Tribunal  
a) may appoint one or more experts to report to it on specific issues to be determined by the Arbitral Tribunal;

b) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

2. Unless otherwise agreed by the parties, if a party so requests, or if the Arbitral Tribunal considers it necessary, the expert shall, after delivery of his written or oral report,

participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

#### **Article 45. Adjournment of the hearing**

1. The Arbitral Tribunal may adjourn the hearing:
  - a) in a case of the necessity to require any party to produce a new evidence;
  - b) in connection with non-appearance of the Respondent's representative at the hearing, if there is no notification in the case materials that the notice of a date of the hearing was delivered to him;
  - c) in a case of the rejection by the MAC Presidium of the request of a party for the challenge of an arbitrator and request of the challenging party to the President of the MAC according to item 4 of Article 30 of these Rules.

The hearing of the case may be adjourned in view of another circumstances determined by the Arbitral Tribunal as such that prevent to settle dispute at this hearing.

2. By adjourning the hearing, the Arbitral Tribunal shall issue a reasoned ruling.

3. In arbitral proceedings with more than one arbitrator, the Ruling on adjournment of the hearing shall be signed by all arbitrators or by a presiding arbitrator only, if so authorised by the members of the Arbitral Tribunal.

#### **Article 46. Interval in the hearing**

1. The Arbitral Tribunal may decide, on its own motion or at the request of a party, to take an interval in the hearing in order to the parties could perform any acts or produce any additional evidence. The Arbitral Tribunal shall notify the representatives of the parties, which participate at the hearing of the case, of the recess against receipt.

#### **Article 47. Suspension of the proceedings**

1. At the request of either party or on its own motion, the Arbitral Tribunal may suspend the arbitral proceedings for uncertain period of time. In that case the Arbitral Tribunal shall issue a reasoned ruling.

### **§ 7. Termination of the arbitral proceedings**

#### **Article 48. An arbitral award and an order for the termination of the arbitral proceedings**

1. The arbitral proceedings shall be terminated by rendering of an arbitral award or an order for the termination of the arbitral proceedings.

#### **Article 49. Rendering of an award**

1. The Arbitral Tribunal shall render an award in the case at its meeting after the oral hearing is closed.

2. In arbitral proceedings with three arbitrators, an award shall be made by a majority vote.

3. The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the Arbitral Tribunal shall suffice, provided that the reason for any omitted signature is stated. Any arbitrator disagreeing with the award made may express in writing his dissenting opinion, which shall be attached to the award.

4. The award shall contain, in particular:

- the name of the MAC;
- case registration number;

- place of arbitration;
- date of the award;
- full names of the arbitrators;
- names of the parties in dispute and other persons participating in the arbitral proceedings;
- subject matter of the dispute and a summary of the circumstances of the case;
- reasons for the award;
- conclusion on the granting or dismissal of the claim;
- amounts of arbitration fees and costs of the case, and apportionment thereof between the parties; and
- signatures of the arbitrators.

#### **Article 50. Arbitral award on agreed terms**

1. If, in the course of the arbitral proceedings, the parties settle their dispute, the arbitral proceedings shall be terminated. The Arbitral Tribunal may, at the request of the parties, record such settlement in the form of an arbitral award on agreed terms.

2. An arbitral award made on agreed terms shall be subject to the respective provisions of Article 49 of these Rules. Such an award shall have the same status and effect as any other award on the merits of the case.

#### **Article 51. Separate arbitral award**

1. The Arbitral Tribunal may, at the request of a party, make a separate award on certain issues or a part of the claims, including in case of a partial recognition of the claims by either of the parties.

2. A separate award shall be subject to the respective provisions of Article 49 of these Rules.

#### **Article 52. Forwarding of the arbitral award to the parties**

1. After rendering an award, the Arbitral Tribunal shall announce an operative part of the award to the representatives of the parties, which have participated at the hearing.

2. The MAC Secretariat shall forward the arbitral award to the parties within 20 days from the date of rendering of the award. The MAC President may, if it considers it necessary owing to exceptional circumstances, extend this term. (Para 2 of Article 52 as amended by the Decision of the Presidium of the Ukrainian Chamber of Commerce and Industry No.24(6) of 25 October 2012)

3. In connection with the particular complexity of the case, the Arbitral Tribunal may, after the oral hearing is closed, decide that the arbitral award will be forwarded to the parties without the announcement of the operative part thereof at the arbitral meeting within the period not exceeding 30 days. The MAC President may, if it considers it necessary owing to exceptional circumstances, extend this term. (Para 3 of Article 52 as amended by the Decision of the Presidium of the Ukrainian Chamber of Commerce and Industry No.24(6) of 25 October 2012)

#### **Article 53. Correction and interpretation of an arbitral award**

1. Within 30 days after receipt of the award, unless another period of time has been agreed upon by the parties,

a) either party may, with notice to the other party, request the Arbitral Tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;

b) if so agreed by the parties, either party may, with notice to the other party, request the Arbitral Tribunal to give an interpretation of a specific point or part of the award.

2. If the Arbitral Tribunal considers the request to be justified, it shall make the correction or give the interpretation within 30 days after receipt of the request. The award as to the correction or interpretation of the arbitral award shall be an integral part of the arbitral award, and shall be subject to the respective provisions of Article 49 of these Rules.

3. The MAC Presidium may, if necessary, extend the period of time within which the Arbitral Tribunal shall make a correction or interpretation under item 2 of this article.

4. The Arbitral Tribunal may correct any errors of the type referred to in item 1(a) of this article on its own initiative within 30 days of the date of the award.

#### **Article 54. Rendering of an additional award**

1. Either party may, with notice to the other party, within 30 days after receipt of the award, request the Arbitral Tribunal to render an additional award as to the claims properly presented in the arbitral proceedings but omitted from the award.

2. If the Arbitral Tribunal considers the request to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall render the additional award within 60 days after receipt of the request. An additional award shall be an integral part of the arbitral award, and shall be subject to the respective provisions of Article 49 of these Rules.

3. The MAC Presidium may, if necessary, extend the period of time within which the Arbitral Tribunal shall make an additional award.

#### **Article 55. An order for the termination of the arbitral proceedings**

1. The Arbitral Tribunal shall issue an order for the termination of the arbitral proceedings when:

- a) it finds that MAC does not have jurisdiction to settle such dispute; or
- b) the Claimant withdraws his claim, unless the Respondent objects thereto and raises objections to the termination of the proceedings and the Arbitral Tribunal recognizes a legitimate interest of the Respondent in obtaining a final settlement of the dispute; or
- c) the parties agree on the termination of the proceedings; or
- d) the Arbitral Tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

The respective provisions of Article 49 of these Rules shall apply to an order for the termination of the arbitral proceedings.

2. An order for the termination of the arbitral proceedings prior the composition of the Arbitral Tribunal shall be issued by the President of the MAC. The President of the MAC shall terminate the arbitral proceedings when:

- a) the Claimant withdraws his claim; or
- b) the parties agree on the termination of the proceedings; or
- c) the Claimant fails to pay the arbitration fee within a fixed period of time; or
- d) the Claimant fails to rectify the defects of the Statement of Claim within a fixed period of time; or
- e) the Claimant fails to submit to the MAC the information (in particular, on Respondent's postal address or on the Claimant's address modification) or documents, necessary for the continuation arbitral proceedings; or

f) the President of the MAC finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

#### **Article 56. Termination of the Arbitral Tribunal's powers**

1. The powers of the Arbitral Tribunal shall terminate with the termination of the arbitral proceedings, subject to the provisions of Articles 53 and 54 of these Rules.

### **SECTION IV. EXECUTION OF THE ARBITRAL AWARD**

#### **Article 57. Effect of the arbitral award**

1. An arbitral award rendered by the MAC shall be final and binding on the parties from the date thereof.

2. An arbitral award rendered by the MAC shall be implemented by the parties voluntarily within the period of time fixed in the award. If no period is fixed in the award, the award shall be implemented immediately.

3. An arbitral award that is not implemented voluntarily within the fixed period of time shall be enforced according to the law of procedure and international agreements of the State where the enforcement of the award is sought.

#### **Article 58. Recognition and enforcement of the arbitral award**

1. If the debtor's location is in Ukraine, the award rendered by the MAC shall be enforced upon application in writing to the competent state court on the debtor's location in accordance with the Law of Ukraine On International Commercial Arbitration and the law of civil procedure of Ukraine.

2. If the debtor's location is outside Ukraine, the application in writing shall be communicated to the competent state court of the State where the debtor is located and in accordance with Article III of the New-York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) or interstate agreement the state court of the contracting State shall recognise and enforce awards of the MAC in accordance with the law of procedure of this State.

3. The party applying for recognition and enforcement of the arbitral award shall supply to the competent state court the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in Article 2 of these Rules or a duly certified copy thereof.

If the application, award or agreement is not made in an official language of the State, in which the recognition and enforcement of the arbitral award is sought, the party applying for recognition and enforcement of the award shall supply a duly certified translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

### **SECTION V. FINAL CLAUSES**

#### **Article 59. Application of the MAC Rules**

1. These Rules become effective on June 1, 2007, and shall apply to the cases, in which the proceedings are instituted from this date.

2. The MAC Rules approved by the Decision of the Presidium of the Ukrainian Chamber of Commerce and Industry of August 25, 1994, Minutes No. 107(2), as amended, shall apply to the cases, in which the proceedings are instituted prior to the above date, unless the parties have agreed otherwise.

## **SCHEDULE ON ARBITRATION FEES AND COSTS**

### **SECTION I. DEFINITIONS**

1. **"Registration fee"** shall mean a fee paid when a Statement of Claim is filed with the MAC to cover the costs to be incurred in connection with commencement of the arbitral proceedings. The registration fee shall be a part of the arbitration fee.

2. **"Arbitration fee"** shall mean a fee payable by the Claimant for each claim filed with the MAC to cover the costs of the MAC to be incurred in connection with the arbitration of a case. Arbitration fee includes arbitrators' fees for examination and settlement of a dispute and an administration fee payable to cover the costs of organization and conduct of arbitral proceedings, including general business expenses made by the MAC.

3. **"Additional costs of the arbitral proceedings"** shall mean special-purpose expenses arising in connection with the examination of a specific case (in particular, expenses of examination by experts, oral and written translations, reimbursement of the arbitrators' travelling expenses, and so on).

4. **"Expenses of the parties"** shall mean expenses incurred by the parties separately to protect their interests in proceedings conducted at the MAC (travelling expenses of the parties' representatives, lawyers' fees, and so on).

### **SECTION II. REGISTRATION FEE**

1. The registration fee to be paid by the Claimant when a Statement of Claim is filed with the MAC shall amount to U.S. Dollars 400.

2. The Ukrainian residents shall pay the registration fee in Ukrainian Grivnas at the exchange rate of the National Bank of Ukraine on the day of payment. The amount of the registration fee shall be transferred to the account of the Ukrainian Chamber of Commerce and Industry No. **260020128332** in Ukreximbank in Kyiv, MFO **322313**, OKPO code **00016934**. The foreign residents shall pay the registration fee in a freely convertible currency on the foreign currency account of the Ukrainian Chamber of Commerce and Industry No. **260020128332/840** in the same bank.

The Ukrainian Chamber of Commerce and Industry shall be indicated as a beneficiary.

The registration fee shall be paid without VAT (Value Added Tax).

3. The registration fee is not refundable. The registration fee shall be counted against the subsequent payment of the arbitration fee.

### **SECTION III. ARBITRATION FEE**

1. The claims shall be paid by the arbitration fee. The arbitration fee payable for non-property claims amounts to U.S. Dollars 1,200. The arbitration fee payable for property claims shall be calculated depending on the amount of the claim according to the following schedule:

<b>Amount of the claim (U.S. Dollars)</b>	<b>Arbitration fee (U.S. Dollars)</b>
up to 10 000	1 200
from 10 001 to 50 000	1 200 + 6% on the amount above 10 000
from 50 001 to 100 000	3 600 + 4% on the amount above 50 000
from 100 001 to 200 000	5 600 + 3% on the amount above 100 000
from 200 001 to 500 000	8 600 + 2% on the amount above 200 000
from 500 001 to 1 000 000	14 600 + 1% on the amount above 500 000
from 1 000 001 to 2 000 000	19 600 + 0,5% on the amount above 1 000 000
from 2 000 001 to 5 000 000	24 600 + 0,45% on the amount above 2 000 000
from 5 000 001 to 10 000 000	38 100 + 0,3% on the amount above 5 000 000
from 10 000 001 to 20 000 000	53 100 + 0,2% on the amount above 10 000 000
from 20 000 001 to 50 000 000	73 100 + 0,15% on the amount above 20 000 000
from 50 000 000	118 100 + 0,1% on the amount above 50 000 000

2. The above amounts of the arbitration fee shall be paid when the case is examined by three arbitrators. If the case is examined by a sole arbitrator, the arbitration fee shall be reduced by 20%.

3. To determine the amount of the arbitration fee in each case, if the amount of the claim is expressed in currencies other than U.S. Dollars, it shall be converted to amount expressed in U.S. Dollars at the exchange rate of the National Bank of Ukraine on the date when the claim is submitted.

4. The Ukrainian residents shall pay the arbitration fee in Ukrainian Grivnas at the exchange rate of the National Bank of Ukraine on the day of payment. The sum of the arbitration fee shall be transferred to the account of the Ukrainian Chamber of Commerce and Industry No. **260020128332** in Ukreximbank in Kyiv, MFO **322313**, OKPO code **00016934**. The foreign residents shall pay the arbitration fee in a freely convertible currency on the foreign currency account of the Ukrainian Chamber of Commerce and Industry No. **260020128332/840** in the same bank.

The Ukrainian Chamber of Commerce and Industry shall be indicated as a beneficiary.

The arbitration fee shall be paid without VAT (Value Added Tax).

5. The arbitration fee and all other amounts due to the MAC shall be considered as paid on the date when they are credited to the account of the Ukrainian Chamber of Commerce and Industry.

The costs of the bank transfer of the aforesaid amounts shall be borne by the party making the respective payment.

6. The arbitration fee, less the amount of the registration fee paid at the submission of the Statement of Claim, shall be paid by the Claimant within 30 days after receipt of the notice of the MAC about the amount of the fee to be paid.

The case shall not progress until the payment of the arbitration fee has been made.

#### **SECTION IV. REDUCTION IN THE AMOUNT AND PARTIAL RETURN OF THE ARBITRATION FEE**

1. If, in the course of the arbitral proceedings, the parties have agreed that the case shall be examined by a sole arbitrator, 20% of the amount of the arbitration fee paid by the Claimant for the examination of the case by three arbitrators shall be returned to the Claimant.

2. If the Arbitral Tribunal terminates the arbitral proceedings:

a) before the date of the first meeting, 50% of the amount of the arbitration fee (the registration fee is to be deducted from the amount of the arbitration fee) shall be returned to the Claimant;

b) at the first meeting without rendering an award, 25% of the amount of the arbitration fee (the registration fee is to be deducted from the amount of the arbitration fee) shall be returned to the Claimant.

3. If the President of the MAC terminates the arbitral proceedings, 75% of the amount of the arbitration fee (the registration fee is to be deducted from the amount of the arbitration fee) shall be returned to the Claimant.

4. The decision on the partial return of the arbitration fee shall be inserted into the award or an order for the termination of the arbitral proceedings.

#### **SECTION V. ARBITRATION FEE FOR A COUNTER-CLAIM OR SET-OFF**

1. A counter-claim or set-off shall be subject to the same rules as are applicable to the arbitration fee for the initial claim. The arbitration fee for a counter-claim or set-off statement shall be calculated at rates being effective on the filing date of the initial claim and shall be paid as specified in Section III of this Schedule.

#### **SECTION VI. APPORTIONMENT OF THE ARBITRATION FEE**

1. Unless the parties have agreed otherwise, the arbitration fee shall be charged to the party against which the award is made.

2. If a claim is granted in part, the arbitration fee shall be charged to the Respondent in proportion to the amount of the granted claims, and the Claimant shall bear the arbitration fee in relating to the amount of the claim that have been dismissed.

#### **SECTION VII. PAYMENT OF THE ADDITIONAL COSTS OF THE ARBITRAL PROCEEDINGS**

1. The MAC may require the parties or either of them to deposit an advance for the additional costs of the arbitral proceedings. The advance for the additional costs may be required by the MAC from the party requesting an additional act likely to lead to additional costs to be incurred in the course of the proceedings, if such request is deemed justified.

2. The MAC may make performance of any acts in the arbitration of a dispute subject to payment by the parties or either of them of an advance for the additional costs within a fixed period of time.

3. If a party appoints an arbitrator residing permanently out of the place of the hearings at the MAC, that party shall be required to deposit an advance for the costs of the participation of such arbitrator in the arbitral proceedings (travelling expenses, accommodation, board, visa, and so on). If the party fails either to deposit the required advance within the fixed period of time or to appoint any other arbitrator whose participation in the arbitral proceedings does not entail additional costs, the party shall be deemed to have waived his right to appoint an arbitrator, and the President of the Ukrainian Chamber of Commerce and Industry shall appoint an arbitrator for such party.

If such person is acting as a presiding arbitrator or a sole arbitrator, the advance for the costs of his participation in the arbitral proceedings shall be deposited by both parties in equal amounts. If the Respondent fails to deposit his respective advance amount within the specified period of time, the Claimant shall be required to deposit such advance amount in full.

4. If, during the examination of the case, either of the parties requests the explanations and statements of the parties, or questions, comments, or directions of the Arbitral Tribunal to be translated, the costs of translation shall be met by that party.

If the arbitral proceedings in the case are conducted neither in Ukrainian nor in Russian languages, all possible costs of translation shall be charged to both parties in equal amounts.

The MAC may require the respective party or both parties to deposit an advance for such costs.

5. If the parties have agreed that the hearings of the case shall be held outside the MAC location, the parties shall bear all additional costs solidary.

The MAC may require the parties or either of them to grant a respective guarantee to compensate for these costs as well as to deposit an advance for such costs.

Failing deposit of the required advance within the fixed period of time, the hearings of the case shall be held in the place of the MAC location.

6. The additional costs of the arbitral proceedings shall be computed in the currency in which they are incurred. The date of payment of the costs shall be determined according to item 5 of Section III of this Schedule.

#### **SECTION VIII. EXPENSES OF THE PARTIES**

1. Each party shall bear its own expenses specified in item 4 of Section I.

2. The expenses incurred by the successful party in connection with the protection of its interests in proceedings conducted at the MAC (travelling expenses of the parties' representatives, lawyers' fees, and so on) may be charged to the other party to the extent that the Arbitral Tribunal determines that the amount of such costs is reasonable.

#### **SECTION IX. DIFFERENT APPORTIONMENT OF ARBITRATION FEES AND COSTS**

1. The MAC may, taking into account the circumstances of a particular case, order a different apportionment of the arbitration fees, additional costs of the MAC, and expenses of the parties than that specified in Sections VI-VIII of this Schedule, in particular, it may order one party to reimburse any additional expenses incurred by the other party through inappropriate or bad faith acts of such party, including acts causing unjustified delay in the arbitral proceedings.

