

**Decree issued by the Federal Minister of Finance and the Federal Minister for the Economy and Labor in agreement with the Federal Minister of Justice on the implementation of Art. XIII ILCCP – Introductory Law to the CCP (Rules of the Court of Arbitration of the Vienna Stock Exchange)**

On the basis of Art. XIII of the Act of 1 August 1895 on the Introduction of a Law on Court Procedures in Civil Law Cases, Imperial Law Gazette No. 112/1895, as amended by the Federal Act, Federal Law Gazette I No. 11/1998, the following rules are hereby promulgated: Rules of the Court of Arbitration

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## I. Jurisdiction

### § 1 General Jurisdiction

A court of arbitration for the securities exchange and a court of arbitration for the commodity exchange have been established at the Vienna Stock Exchange. The jurisdiction of the courts of arbitration is defined by the subject matter of the transaction giving rise to the dispute (§1 Stock Exchange Act, Federal Law Gazette (FLG) No. 555/1989, as amended).

### § 2 Jurisdiction for Stock Exchange Transactions

Disputes arising from stock exchange transactions are decided by the court of arbitration having jurisdiction according to the subject matter of the dispute.

### § 3 Extended Jurisdiction of the Court of Arbitration for the Securities Exchange

(1) The court of arbitration of the securities exchange shall also have jurisdiction for disputes arising from transactions other than stock exchange trades, specifically, from transactions relating to securities, foreign exchange, discounting in bills of exchange and lending deals as commonly transacted on the market insofar as these have been concluded between exchange members and exchange dealers irrespective of whether directly or through the services of an official broker of the stock exchange and unless the disputing parties have not reached any other written agreements.

(2) The jurisdiction of the court of arbitration of the securities exchange also covers disputes between the parties and the Official Broker.

### § 4 Extended Jurisdiction of the Court of Arbitration for the Commodity Exchange

(1) The jurisdiction of the Court of Arbitration of the commodity exchange also covers disputes relating to commodity transactions concluded off the exchange floor, but only under the following conditions:

1. One of the two parties agreeing to the jurisdiction of the court of arbitration must be a member of one of the two sections (commodity exchange or stock exchange) of the Vienna Stock Exchange at the time such agreement is reached or at the time the statement of claim is filed;
2. Each of the parties to the dispute must be either a government administration body, a trade company, a partnership, a member of the stock exchange or an exchange dealer or a person who deals professionally in the production, selling or processing of movable property that constitutes the object of the transaction or a person that uses such movables in their industrial, commercial or trade operations;
3. Exchange trading according to the Stock Exchange Act must permit the transaction that is the subject matter of the dispute;
4. Under a written arbitration agreement or in correspondence between the two parties conducted by telegram or telefax, both parties must submit to any verdict handed down by the arbitral tribunal. The arbitration agreement may generally be concluded for all transactions which are concluded between the two parties, whether directly or through the intermediation of a third party; however, such agreements may be rescinded at any time unilaterally in writing with regard to any further transactions to be concluded in the future. Registered merchants, exchange members and exchange dealers are bound by acceptance of a contract note containing a clause which provides for the jurisdiction of the court of arbitration in disputes arising from the transaction unless said clause or contract note are objected to as being contrary to the terms of the agreement in general or rejected in the contract note without comment.

(2) Commodity transactions for the purposes of paragraph 1 include work contracts, contracts for the purpose of associating for individual mercantile dealings in commodities for joint account, intermediary

dealings in commodities including contracts with independent agents, and ancillary transactions serving commodity dealings.

(3) The restrictions contained in paragraph 1 no. 2 are not applicable to foreigners. Foreigners are deemed to have submitted to the court of arbitration for the purposes of paragraph 1 no. 4 upon acceptance of a contract note even when they are not registered merchants or members or dealers of an exchange.

**§ 5 Acceptance without Objection of a Contract Note**(1) Registered merchants, members of an exchange and dealers are deemed to have submitted to the court of arbitration, if the conditions of § 4 paragraph 1 nos. 1, 2 and 3 are met in the case of transactions concluded on or off the exchange through the intermediary services of an official broker of the commodity exchange and if both parties have received contract notes prepared and signed by the official broker that contain the provision that any legal disputes arising from said transaction shall be decided by the court of arbitration. The jurisdiction of the court of arbitration does not, however, apply if submitting to the court of arbitration was explicitly excluded before or at the time that the instructions were given to the official broker.

(2) The court of arbitration of the Commodity Exchange also has jurisdiction over disputes between the parties to a transaction and the official broker.

(3) The preceding paragraphs apply to foreigners even if they are not registered merchants, members or dealers of any exchange.

## **II. Panels of Arbitrators**

### **§ 6 Honorary Office of Arbitrator**

The office of arbitrator is honorary and does not give rise to the payment of any fees.

### **§ 7 Panels of Arbitrators**

A panel of arbitrators shall be set up for the stock exchange and for the commodity exchange and their members shall be appointed in accordance with the proposals pursuant to § 8. The members of the securities exchange shall be appointed by the Federal Minister of Finance and those of the commodity exchange by the Federal Minister for the Economy and Labor.

### **§ 8 Right to Nominate Arbitrators**

(1) The chairpersons of the panel of arbitrators in office for the securities exchange shall have the right to nominate members to the panel of arbitrators. Furthermore, the Chamber of Brokers of the Vienna Stock Exchange shall have the right to nominate a member from the group of official brokers of the stock exchange.

(2) The Advisory Council for the General Commodity Exchange (§ 11 of the statutes of Wiener Börse AG) shall have the right to nominate members to the panel of arbitrators.

(3) Any exchange dealer who is at least 30 years of age shall be eligible for nomination as an arbitrator to the respective panel of arbitrators.

(4) The nominations pursuant to paras. 1 and 2 shall be submitted at the latest three months before the end of the period of office of the panel of arbitrators in office.

### **§ 9 Period of Office of Arbitrators**

- (1) The arbitrators are appointed for a period of office of five calendar years beginning on 1 January of the year following their election. Re-appointment is permissible.
- (2) Replacement appointments may be made at any time to fill vacancies. The period of office of arbitrators appointed in this manner ends at the same time as the panel of arbitrators in office at the time of his or her appointment.

### **§ 10 Announcements**

The names of the appointed arbitrators shall be announced in an appropriate manner and notified to the Governor of the Province of Vienna.

### **§ 11 Chairperson of the Panels**

- (1) At the first session of its term of office (§ 9 para.1), each panel shall elect a chairperson and one or two deputy chairpersons from among the arbitrators; If such office becomes vacant during the term of office, a special election shall be held.
- (2) If the chairperson cannot attend his or her office, the deputy chairperson having served the longest shall act as deputy; if both have the same years of office, the older person shall act as deputy. If the deputy chairpersons are also unable to act as deputies, the chairperson shall be a member of the panel having served the longest and that is a resident of Vienna; if panel members have the same years of office, age shall decide.
- (3) The chairperson is responsible for ensuring that a sufficient number of arbitrators are available to constitute each of the panels of arbitrators.

### **§ 12 Sessions of the Panels**

- (1) The chairperson summons the panel of arbitrators to sessions and oversees these.
- (2) The chairperson shall summon a session of the panel if it becomes necessary in the course of work or if ten members of the panel request a session or if the management board of the exchange operating company requests a session stating the reasons of the chairperson.
- (3) The quorum of the panel is given if all arbitrators have been invited and at least one-tenth of the arbitrators is present (including the chairperson).
- (4) The sessions of the panel of arbitrators shall be accompanied by at least one of the secretaries of the court of arbitration acting as an adviser.
- (5) The general assembly of the panel of arbitrators decides on matters defined in §16 by a simple majority of votes cast and also on the removal from office of a chairperson or deputy chairpersons by two-thirds majority of votes cast. In the case of a tie, the chairperson of the panel of arbitrators shall have the casting vote. In the case of a vote on the removal from office of a chairperson, deputy chairperson or member of the panel, the person concerned shall not be permitted to be present.
- (6) Every member of the panel of arbitrators shall have the right to demand prior to any vote that such vote be conducted as a secret ballot; otherwise, voting shall not be anonymous.
- (7) The general assembly of the panel shall not be open to the public.
- (8) The general assembly may decide to invite individuals to provide information on specific items of the agenda. Such individuals shall be under the obligation to maintain secrecy on all matters they gain knowledge of at the meetings.

### **§ 13 Arbitrators that are not Members of the Exchange (listed arbitrators)**

- (1) In disputes before the court of arbitration of the commodity exchange, parties that are not members or dealers of the exchange shall have the right to designate as arbitrators persons that do not belong to the

exchange. However, they are restricted in their selection to persons nominated by the Chamber of Commerce of Vienna in a list sent to the court of arbitration.

(2) The number of arbitrators contained on this list shall be ten. The conditions for being named on said list are: full capacity to engage in business transactions, at least 30 years of age, and the necessary expert knowledge. The members of the panel of arbitrators named by the Chamber of Commerce of Vienna must have operated a commercial enterprise independently for at least three years or have been employed by such an enterprise for at least five years. The appointment shall be made for the same period as the duration of the panel of arbitrators pursuant to §9.

(3) The list of the arbitrators not belonging to the exchange shall be posted within the premises of the court of arbitration pursuant to §31 and shall be published in the Official Bulletin of the exchange. Any subsequent changes to the list shall be published in the same way.

(4) The arbitrators on the list do not form part of the panel of arbitrators (§ 7); they are to be invited to attend and vote at sessions of the panel that deal with matters listed in § 12 that are of general interest and that do not concern exclusively the panel.

#### **§ 14 Swearing in Arbitrators of the Commodity Exchange**

The elected or nominated arbitrators of the commodity exchange shall be sworn in before taking office by the President of the Commercial Court of Vienna pursuant to the Decree of 26 March, 1903 (Imperial Gazette no. 71). The exchange operating company must be the party requesting the swearing-in.

#### **§ 15 Loss of Office and Suspension from Office**

(1) An arbitrator belonging to the exchange loses his or her office if

1. he or she no longer has an exchange floor pass as an exchange dealer because the exchange member having obtained the floor pass for the dealer withdraws said dealer's status by submitting a written statement to this effect or if the dealer himself or herself sends such a written statement of withdrawal and he or she has not been granted a new floor pass within six months for the same exchange;
2. The status as an exchange dealer with a floor pass is lost for any of the following reasons:
  - the legal relationship between the exchange dealer and the exchange member has been terminated;
  - the exchange member that had requested the floor pass for an exchange dealer loses its status of membership;
  - he or she loses the authorization to conclude transactions, and he or she does not obtain a new floor pass as an exchange dealer for the same exchange within six months;
3. his or her exchange floor pass has been withdrawn for another reason;
4. he or she has been sentenced to a prison sentence of one year or more by a court of justice for a crime committed;
5. he or she has been removed from office (§ 16).

(2) If criminal proceedings are opened against an arbitrator belonging to the exchange that may result in a penalty involving loss of office or if an arbitrator's exchange dealer status is suspended, then said arbitrator shall be suspended from office until the final ruling of the proceedings has been handed down or for the period of suspension of exchange dealer status. The chairperson may order the suspension of exchange dealer status for the duration of the exclusion proceedings.

(3) The chairperson of the panel of arbitrators shall declare the loss of office or the suspension from office.

### **§ 16 Procedure in the Case of Breaches of Obligations by Arbitrators**

(1) If the chairperson of the panel becomes aware of a serious breach of obligation by an arbitrator belonging to the exchange, in particular, repeated neglect or failure to carry out duties of office without any reason, or acceptance of gifts or partisan behavior, the chairperson shall investigate the facts in detail and place the matter before the panel for decision. Before a decision is taken, the arbitrator shall be given the opportunity to make a statement in response to the accusations.

(2) The general assembly of the panel may decide to remove an arbitrator from office. However, such a decision shall require the attendance of at least half of all members of the panel. The decision, which is to be taken by an absolute majority of those present, shall be communicated to the arbitrator stating the grounds.

(3) In the event the arbitrators do not belong to the exchange, the chairperson of the panel shall file a complaint with the Chamber of Commerce of Vienna in such a case.

## **III. Secretaries**

### **§ 17**

(1) The secretaries must have successfully completed the exams for public notaries, attorneys-at-law or office of court judge and shall be appointed by the exchange operating company. The appointment of the secretaries must be approved by the Federal Ministry of Finance with the agreement of the Federal Ministry of Justice, the Federal Ministry for Agriculture and Forestry, Environment and Water Management and the Federal Ministry for the Economy and Labor.

(2) The secretaries may be assigned to both panels at the same time.

(3) The secretaries act as intermediaries for communication between the parties and the panel of arbitrators, accept receipt of statements of claim, give advice to the parties concerning the arbitration procedure and for the protection of their interests, call the hearings, supervise the work of the court office, in particular, the notification procedures for documents, give the necessary instructions for the formation of arbitral panels, ensure the taking of minutes during the hearings, take part in the discussions of the arbitrators with a consultative voice, and draw up the decisions of the arbitral panels.

(4) The secretaries are subject to the instructions of the exchange operating company with respect their administrative work for the panels of arbitration. They are independent in their capacity as judicial advisors pursuant to Article XV of the Introductory Act to the Code of Civil Procedure (IACCP).

## **IV. Constitution of the Arbitral Tribunals**

### **§ 18 Composition of Each Arbitral Tribunal**

(1) Each arbitral tribunal shall consist of three arbitrators. Under penalty of nullity of the award (§ XXIII para. 1 no. 7 Introductory Act to the Code of Civil Procedure (IACCP)), they must be present during the entire hearing and the discussion of the decision.

(2) If it becomes necessary for the chairperson or one of the members of the panel to be changed before a ruling is passed (§ 22 para. 2), the oral hearing must be repeated before the new panel of arbitrators based on the complaint filed, the evidence on record and the minutes of the proceedings.

(3) Moreover, the panel of arbitrators shall only be able to act bindingly if a secretary is present at the hearing and discussion.

**§ 19 Constitution of the Individual Arbitral Tribunals**

- (1) Each party shall appoint an arbitrator and one or more reserve arbitrators for the event that one of them is prevented for exercising their office. The two arbitrators appointed by the parties shall appoint the presiding arbitrator according to § 21.
- (2) The parties are not restricted in their choice of arbitrators to those that are actually present at the exchange or to arbitrators physically present at the exchange because they have fixed duty times.
- (3) The circumstance that due to termination of office or to temporary hindrances of individual arbitrators or because the list of arbitrators nominated by the Chamber of Commerce of Vienna (§ 13) the panel of arbitrators was not complete at any time shall not constitute grounds for objections to the setting up of an arbitral tribunal or to an award.

**§ 20 Appointment of Arbitrators**

- (1) As a rule, the selection of the arbitrator and of the reserve arbitrators by the claimant shall be done in the statement of claim. If the claimant fails to do so, the secretary shall request the claimant in writing, stating the consequences of defaulting and enclosing a list of arbitrators, to appoint an arbitrator and the reserve arbitrators within the reasonable period of time specified.
- (2) Should the claimant fail to appoint an arbitrator and the reserve arbitrators, proceedings shall not be initiated on the statement of claim.
- (3) The notice to the respondent to appoint an arbitrator shall be sent together with the notification of the statement of claim and summons to the oral hearing. A list of arbitrators shall also be enclosed.
- (4) If the respondent does not make an appointment in time, the chairperson of the panel of arbitrators shall appoint an arbitrator from the panel of arbitrators for the respondent.
- (5) In the case of an arbitral tribunal for the commodity exchange, litigation parties that are not members of the exchange shall be informed of their right to choose an arbitrator from the list of arbitrators that do not belong to the exchange (§ 13) and shall be sent a copy of the list with the notification to make their appointments.
- (6) When a respondent, who is not a member of the exchange, fails to appoint an arbitrator in time for at the arbitral tribunal of the commodity exchange, the chairperson of the panel shall appoint an arbitrator from the panel of arbitrators for the respondent from the list of arbitrators that do not belong to the exchange.
- (7) Joint parties must agree on the appointment of an arbitrator; if joint respondents cannot agree within the time limit set by the secretary, the chairperson of the panel shall appoint an arbitrator from those proposed by the joint parties.
- (8) When a regular court of law refers a legal action to the court of arbitration, both parties shall be requested to appoint arbitrators before the date for a hearing is fixed. In this case, the chairperson of the panel shall appoint an arbitrator also for a claimant in default.
- (9) The selection of the arbitrators may also be recorded in the minutes.

**§ 21 Appointment of the Presiding Arbitrator**

- (1) The arbitrators appointed shall select a presiding arbitrator from among the remaining arbitrators. The parties shall not be restricted in their choice of arbitrators to those that are actually present at the exchange or to those present due to the introduction of fixed duty times.
- (2) If the appointed arbitrators cannot agree upon a presiding arbitrator, he or she shall be nominated by the chairperson of the panel. If, at the court of arbitration of the Commodity Exchange, a member of the panel and a person who does not belong to the exchange are appointed as arbitrators and the arbitrators cannot agree upon a presiding arbitrator, the chairperson shall choose the presiding arbitrator alternately from the arbitrators belonging to the exchange and the arbitrators nominated by the Chamber of Commerce if Vienna.



## § 22 Duties of Office

- (1) The arbitrators appointed or chosen in each individual case and the presiding arbitrator appointed or chosen by the chairperson of the panel are obliged to accept the appointment: the chairperson of the panel shall have competence to decide whether to allow a refusal.
- (2) If an arbitrator appointed by a party is prevented from appearing at a hearing, one of the reserve arbitrators named by that party shall take his or her place. If the reserve arbitrators are also prevented from appearing, the chairperson of the panel shall choose an arbitrator for this party.

## V. General Rules of Procedure

### § 23 Deliberations

- (1) The deliberations and discussion on decisions by the arbitrators are conducted in secret: separate minutes shall be kept of these meetings. The award and all other decisions of the arbitrators are taken by absolute majority. The presiding arbitrator only votes if there is equality of votes.
- (2) No arbitrator may refuse to vote on an issue placed before the arbitrators for decision. This also applies if he or she was a minority in a preceding vote on a related question. It shall be required to hold a vote first on the jurisdiction of the court of arbitration, the necessity of additional measures relating to the proceedings and other preliminary questions. If there are difficulties in obtaining an absolute majority that cannot be resolved by dividing the issues and repeating the vote, the presiding arbitrator shall proceed by breaking down the subject matter of the vote into the individual questions critical for the issue and hold votes on each one in an attempt to obtain a majority vote on the matter by combining these votes.
- (3) If there are more than two opinions concerning amounts which have to be determined and none of the opinions has a majority, then the votes for the largest amount will be added to the votes for the next lower amount and the procedure repeated until an absolute majority is reached.
- (4) The arbitral tribunal shall settle any differences of opinion as to whether the results of voting announced by the presiding arbitrator were correct.

### § 24 Exclusion and Objections to Arbitrators and Secretaries

- (1) An arbitrator may be rejected by the parties to the dispute:
  1. because such arbitrator is excluded from acting judicially in this particular case, or
  2. because there is sufficient reason to doubt his or her impartiality.
- (2) An arbitrator shall be excluded from acting judicially in the following cases:
  1. In subject matters in which he or she is a party or in relation to which he has rights or liabilities in common with a party or is liable to indemnify a party.
  2. In subject matters concerning his or her spouse or persons directly related to the spouse by blood or marriage or persons related to the arbitrator by blood to the fourth remove or by marriage to the second remove.
  3. In subject matters in which he or she is related to one of the representatives of the parties in any of the manners specified in no. 2.
  4. In subject matters concerning his or her adoptive or foster parents, or adoptive or foster children or his or her ward.
  5. In subject matters in which he or she was or is still appointed as legal representative for one the parties.
- (3) Arbitrators falling under any of the categories of paragraph 2, nos. 1 to 5 are obliged to refrain from acting judicially in this case and to immediately give notice of the fact to the chairperson of the panel of arbitrators.

- (4) A party may no longer refuse an arbitrator on the grounds of suspected partiality if the party has already entered into the proceedings without having raised any objections.
- (5) The grounds for exclusion and refusal shall also apply to the secretaries.

### **§ 25 Decisions concerning Exclusion and Objections**

- (1) The chairperson of the panel of arbitrators decides whether to allow an objection raised by a party before the day of the hearing or accept grounds for exclusion raised by an arbitrator or a secretary. If the chairperson has not taken a decision before the beginning of the hearing or if an objection is raised by a party, an arbitrator or a secretary due to relationships or grounds specified in § 24 on the day of the hearing, the arbitrators must take a decision in the absence of the arbitrator or secretary concerned. If the vote ends in tie, the arbitrator or secretary in respect of whom one of the grounds set out in § 24 is raised shall refrain from taking part in the hearing or decision on the dispute.
- (2) If the majority of arbitrators are rejected, the chairperson of the panel shall decide whether to permit such objections.
- (3) When an arbitrator withdraws, he or she shall be replaced by the reserve arbitrator nominated by the party. If no reserve arbitrator is available, the chairperson of the panel shall choose the arbitrator. When a presiding arbitrator withdraws, the arbitrators shall appoint another presiding arbitrator (§ 21). When a secretary withdraws, he or she shall be replaced by another secretary.

### **§ 26 Third Party Notice and Intervention**

The provisions of the Code of Civil Procedure shall apply mutatis mutandis to the involvement of third parties in the legal dispute (notification of third parties by one of the litigating parties, third party intervention).

### **§ 27 Representation of the Parties**

- (1) The parties are entitled to be represented before the arbitral tribunal by persons conferred the power of attorney. Representation by a person conferred a power of attorney does not exclude a party from being present together with his or her representative before the arbitral tribunal or from making statements.
- (2) The following persons are permitted to appear before the arbitral tribunal as representatives of parties:
1. Attorneys-at-law, authorized officials of the Federal Financial Agency or other government officials furnishing a written document authorizing them to act as representative for the Federal Financial Agency;
  2. Partners, directors, authorized signatories and other employees of the parties;
  3. Exchange members and exchange dealers, and persons on the list of arbitrators that do not belong to the exchange (§ 13).
  4. Officially appointed liquidators, trustees and receivers.
- (3) The persons with powers of representation shall furnish proof of said power representation in the form of a written power of attorney submitted at the first hearing in which they take part. The declaration of the party on the power of attorney conferred may also be included in the minutes. If an attorney-at-law acts as representative, his or her reference to the power of attorney conferred in him or her shall replace the written document of proof.
- (4) In the case that such documentary evidence is missing, § 38 paras. 1 and 2 Code of Civil Procedure shall apply accordingly.

### **§ 28 Costs of Arbitration Proceedings**

- (1) Each party shall bear its own costs of the proceedings initially.
- (2) A party which loses a case completely shall compensate the opposing party for all necessary expenses incurred for bringing the case before the court, for pursuing the relevant legal procedures and for the costs of

his or her defense. These expenses include the contribution to the costs of the proceedings before the court of arbitration, stamp duties and the expenses for employing a legal representative.

(3) The arbitral tribunal shall determine the amount of the costs. The decision on costs shall be included in the award.

(4) Cases in which a party wins in part and loses in part or a party demands cost reimbursement on the grounds of late filing, unfounded claims or negligent or accidental incidents, the decision shall be taken by applying the provisions of the Code of Civil Procedure accordingly.

(5) The decision on costs reached outside arbitration proceedings is taken by the chairperson of the arbitral tribunal with the consultation of the secretary in cases in which there is neither an award nor a settlement by the arbitral tribunal. If the presiding arbitrator is unable to act, one of the arbitrators of the tribunal shall take his or her place. If no arbitrator holds office or if an arbitral tribunal has not yet been formed, the chairperson of the panel shall take the decision regarding the costs together with a secretary.

### **§ 29 Serving Notifications**

(1) Notifications by the court of arbitration shall be made as defined by the Code of Civil Procedure, mutatis mutandis, provided, however, that serving notifications in Vienna can be done by the employees seconded to the court of arbitration by the exchange operating company in accordance with the legal provisions governing the serving of documents by judicial bodies. The method of serving the notification shall be determined by the secretary.

(2) If a foreigner is served in his or her home country, the service of notification shall be valid if it has been carried out in accordance with the provisions of the country rather than with those of the preceding paragraph. If a notification is served to a legal entity or a registered firm, its home country shall be deemed to be the country in which it has its registered office (principal place of business).

### **§ 30 Guardian ad litem**

(1) If it is credibly shown that the place is unknown at which the defendant is staying to where the statement of claim is to be served, then the chairperson of the panel shall appoint a guardian ad litem. The guardian ad litem must be entitled to represent parties before the court of arbitration (§ 27 paragraph 2).

(2) The appointment of the guardian ad litem, his or her name, address and a brief indication of the content of the written document to be served together with the name of the court of arbitration and the matter of the dispute shall be announced by decree. The decree shall state that the party for whom a guardian ad litem has been appointed shall be represented at its cost and peril until his or her appearance in person or a person conferred a power of attorney is appointed.

(3) The decree shall be posted pursuant to § 31 and published once in the official bulletin "Amtsblatt zur Wiener Zeitung". If it seems appropriate in individual cases and does not entail expenses disproportionately high in comparison to the subject matter of the dispute, the decree shall also be published in other newspapers, if necessary, several times.

(4) The notification shall be deemed served upon posting of the decree and the handing over of the notification to the guardian ad litem.

(5) The expenses of the publication and the appointment of the guardian shall be borne by the party responsible for the legal action without prejudice to that party's right to indemnity.

(6) If a notification is to be served in a foreign country and no confirmation is received that the documents have been served within a reasonable time, the claimant – depending on the situation of the matter – may request the serving of the notification to be done by publication of an official notice (§ 25 Act on the Serving of Official Notices) or the appointment of a guardian with the notification being served to said guardian, with the simultaneous public posting of a decree to this effect being required in both cases pursuant to Art 31. The same procedure shall be followed if the serving of a notification in a foreign country fails or if a request

by the arbitral tribunal will probably fail due to the obvious refusal of the foreign authorities to provide legal assistance.

### **§ 31 Posting of Notices**

Notices requiring posting on a notice board pursuant to the Rules of Arbitration shall be posted in the generally accessible entrance areas of the exchange operating company.

### **§ 32 Reinstatement to Previous Status**

(1) If a party is prevented by an unforeseen or unavoidable event from the timely appearance before the court or from acting in a timely manner with respect to a procedural act subject to a deadline, and as a consequence, suffers a disadvantage in the arbitration proceedings that cannot be remedied, then upon its request, the proceedings may be reinstated to the previous status.

(2) The petition must be submitted within 14 days. The period runs from the day on which the hindrance which caused the default ceases; the period cannot be extended. Obviously late submissions of petitions shall be refused without any further procedures.

(3) The petition shall contain a recital of all founded circumstances supporting the request for reinstatement and the means of proving them. The party shall take the steps in the procedure which were omitted at the time it submits the petition, or, in the case of failure to appear at a hearing, produce whatever should have been produced by the defaulting party in preparation for the hearing.

(4) The reinstatement granted sets the case back to the status which it had before the default. Any awards already issued as a consequence of the default shall be set aside if reinstatement is granted. The hearing missed may be held immediately upon granting reinstatement.

(5) Upon petition and regardless of whether the petition for reinstatement is accepted or granted, the party requesting reinstatement shall be ordered to pay all the other party's costs caused by its default and incurred by the hearing on the petition for reinstatement, and also the costs of the proceedings which cease to have effect as a result of the reinstatement.

(6) Reinstatement is not possible in cases in which the deadline for submitting a petition has been missed and in cases in which a deadline for naming an arbitrator was missed.

### **§ 33 Adjournment and Suspension of Proceedings**

(1) The provisions of the Code of Civil Procedure shall apply accordingly to the adjournment of proceedings.

(2) The parties may agree to suspend the case; the agreement is effective from the time as of which both parties have notified this to the court. The case shall also be suspended if neither of the parties appears at a hearing. The suspension shall continue until one of the parties submits a petition to resume the proceedings.

### **§ 34 Open to the Public**

(1) The hearings of the arbitral tribunal are open to the public.

(2) The tribunal shall exclude the public if this would present a threat to public decency and morality or to the public order or if there is reasonable cause to fear that the public nature of the hearings would be misused for the purpose of disruption of the hearings or to prevent ascertaining the facts of the case.

(3) The tribunal may also exclude the public upon request of only one party if a decision of the dispute involves facts relating to family life to be discussed and proven.

(4) The public may be excluded for an entire hearing or for parts of it. Under no circumstances may the public be excluded from the pronouncement of the award. If the public has been excluded from a hearing, the disclosure of the content of the hearing to the public shall be prohibited.

(5) The hearing on a petition to exclude the public shall be deliberated at a non-public meeting. The decision on the exclusion of the public shall be disclosed to the public.

(6) If the public is excluded, each party may demand that three persons of trust (apart from their representative) be permitted to attend the hearing. Despite exclusion of the public, the bodies entrusted with the state supervision of the exchange and the delegate of the Federal Ministry of Justice responsible for supervision of the jurisdiction of the court of arbitration are entitled to be present.

### **§ 35 Order at Hearings**

(1) The presiding arbitrator is responsible for the maintenance of order at the hearing. He or she is authorized to admonish persons that disturb the hearing by inappropriate conduct and to give the necessary instructions for maintaining order.

(2) Expressions of applause or disapproval are forbidden. Any person who disturbs the hearing despite being admonished may be removed from the hearing. The removal of a person taking part in a hearing can only be ordered if this person has been given prior warning and reminded of the legal consequences of such a measure.

(3) Proceedings may be initiated against a party or his/her representative that has been removed from a hearing upon request in the same way as if the party had voluntarily stayed away from a hearing. This means that the hearing may be continued in the absence of such party or its representative with the other party alone and, if applicable, an award by default may be pronounced. This possible mode of procedure shall be brought to the attention of the party or its representative at the time warning is issued.

### **§ 36 Settlement before the Arbitral Tribunal**

(1) The tribunal is authorized to attempt to bring about a settlement between the parties at any stage of the proceedings but is obliged to do so before the close of hearings. If the attempt is successful, the arbitral tribunal shall include the settlement in the minutes also upon request of only one party. Settlements before the arbitral tribunal shall be signed by both parties. Minutes of the settlement shall be signed by the presiding arbitrator and the secretary.

(2) In a settlement before the arbitral tribunal, the recognition of a legal relationship or the assumption of an obligation to perform, to permit, or to cease and desist from doing any act may be made contingent on the swearing of an agreed oath. The oath may only be made in respect of the facts of the matter disputed. The settlement shall stipulate the time period within which the party obliged to swear the oath shall take the necessary steps before the court of arbitration.

(3) Copies of the settlement shall be made available to the parties upon request.

### **§ 37 Out of Court Settlement**

The parties may also appear before a jointly chosen arbitrator and secretary out of court and conclude a valid settlement in their presence. Minutes of the settlement shall be taken and signed by the arbitrator, the secretary and the parties.

### **§ 38 Summons to an Attempt at Settlement**

Any person who intends to file a statement of claim with the court of arbitration in a dispute for which the court has jurisdiction may apply to a secretary to summon the other party to attempt to reach a settlement prior to filing the claim. Failure to attend by the other party has no detrimental consequences. A settlement may be recorded the same as under § 37 by a jointly chosen arbitrator and secretary. Proposals, statements and remarks made by the parties in the course of the settlement proceedings shall not be binding on a following arbitration procedure.-

### **§ 39 Minutes**

(1) Minutes shall be kept of every hearing. They shall contain:

1. The time and place of the hearing, the names of the arbitrators, of the secretary, of the parties and of their representatives, a short reference to the subject matter of the dispute and information on whether the hearing was open to the public or if the public was excluded.
  2. The names of the persons that appeared at the hearing as parties or their representatives.
  3. Declarations of the parties that contain a reduction or modification of the claim for relief, an explicit acknowledgement of a debt or a waiver of a claim or of a right to take recourse;
  4. Petitions submitted by the parties during the hearing, as far as they concern the merits or are of importance for the course or the decision on the proceedings.
  5. A comprehensive summary of the pleas of both parties referring to the facts, including the evidence furnished.
  6. The results of the taking of evidence;
  7. Court settlements or the awards pronounced and decisions taken at the hearing, in particular, decisions concerning objections to an arbitrator, decisions made during the hearing on the jurisdiction of the arbitral tribunal and on petitions in the meaning of § 46;
  8. A statement on whether both parties were present at the pronouncement of the award.
- (2) If an objection is raised during the hearing stating that the claim filed is based on a speculative transaction to make a profit on differences that may be assessed as a bet or wager, this shall be recorded in the minutes.
- (3) The minutes shall be drawn up after the hearing by the secretary on the basis of his or her notes in the form of a summary and then presented to the parties for review and signature.
- (4) If a party refuses to sign, this shall be recorded in the minutes, stating the reasons.
- (5) The secretary may also use a recording device for drawing up the minutes of the proceedings. In such case, the information pursuant to paras. 1 nos. 1 and 2 and the statement explaining that for the remainder of the minutes a recording device was used must be included in writing in full in the minutes of the hearing.
- (6) Minutes on settlements are to be taken and presented for signature during the hearing.

## **VI. Proceedings until the Award**

### **§ 40 General**

- (1) The proceedings will be defined by the arbitral tribunal at its discretion unless these Rules of Arbitration contain provisions in this respect.
- (2) The arbitral tribunal shall also decide on sub-disputes.

### **§ 41 Statement of Claim**

- (1) The statement of claim shall be made orally or in writing to a secretary. The statement of claim shall contain the names (first name and surname), occupation, place of residence and party status of the parties and a reference to the subject matter of the dispute as well as the signature of the claimant or of his/her legal representative or of a person to whom he or she has conferred the power of attorney.
- (2) The statement of claim shall further set out (briefly but completely) the facts establishing the jurisdiction of the court of arbitration and the facts giving rise to the claimant's claim; the evidence for each particular point shall be precisely identified and the arbitrators and reserve arbitrators appointed by the claimant shall be named. The statement of claim must contain a specific claim for relief.
- (3) Sufficient identical copies of the statement of claim shall be supplied so that the respondent or respondents can be served one copy and one copy remains for the court file.
- (4) The power of attorney of the representative shall be attached to the statement of claim and – if the jurisdiction of the court of arbitration of the commodity exchange over a dispute not arising from an exchange

dealing is claimed – the original or counterpart (copy) of the contract note or arbitration agreement shall be attached to the statement of claim.

(5) The secretary shall take steps to correct any formal defects.

#### **§ 42 Rejection of the Statement of Claim**

If it is clear from the statement of claim that the court of arbitration has no jurisdiction, the secretary may reject the statement of claim with the comment that the claimant may contest the refusal by applying for the arbitral tribunal to be constituted to decide on its jurisdiction.

#### **§ 43 Summons**

(1) On the basis of the statement of claim, the secretary shall fix a date for a hearing. Both parties shall be summoned. A copy of the statement of claim or a copy of the minutes of the statement of claim made orally shall be included with the summons to the respondent.

(2) The hearing date shall be fixed so as to permit the respondent to choose an arbitrator and the reserve arbitrators.

(3) The summons shall inform the parties that should either of the parties fail to appear at the hearing, the allegations of fact concerning the subject matter of the dispute presented by the party appearing before the tribunal shall be deemed proven unless they are contradicted by evidence already on record, and that on this basis, the claim shall be decided by an award by default upon request of the party having appeared. Furthermore, the parties shall also be informed in the summons of the provisions governing representation before an arbitral tribunal (§ 27).

#### **§ 44 Withdrawal of Claim**

(1) Without the consent of the respondent, the claim may only be withdrawn before the beginning of the first hearing. If, at the same time, the claimant gives up his or her claim, the statement of claim may be withdrawn without the consent of the respondent at any time before the end of the hearing.

(2) A petition for the refunding of costs following withdrawal of the claim shall be heard and determined by an award, unless the respondent is satisfied with ascertainment of the costs by simple court order (§ 28, paragraph 5).

(3) Petitions pursuant to para. 2 must be submitted within four weeks as of the time knowledge of the withdrawal of the claim is gained.

#### **§ 45 Decision on Jurisdiction**

(1) The arbitral tribunal, shall, by virtue of its office, at the first scheduled hearing, examine and decide whether it has jurisdiction before attempting a settlement between the parties, before recording an out-of-court settlement in the minutes, and in particular, before pronouncing an award by default; also in the case the respondent has not raised any objection claiming lack of jurisdiction or has failed to appear at the hearing. If the question of jurisdiction cannot be considered separately from the main subject matter, then both matters shall be heard at the same time.

(2) The claimant shall have the burden of proof for matters of relevance for the jurisdiction of the court of arbitration unless these are a matter of record at the court. The fact that a respondent admits to the full or partial truth of such circumstances not known to the court shall not relieve the claimant of the burden of proof or the arbitral tribunal of the duty to ascertain the truth of said circumstances.

(3) If the arbitral tribunal declares that it has no jurisdiction, the claim shall be dismissed by an award. This award, upon request, may impose on the claimant the order to reimburse the respondent for all costs arising from the appearance at the hearing and from using the services of a representative.

**§ 46 Disproportion to Agricultural Activity**

Should one of the parties come from an agricultural enterprise, the arbitral tribunal shall reject the statement of claim as unsuitable for arbitration either upon petition or ex officio if the commodity transaction which is the subject matter of the dispute is manifestly disproportionate to the agricultural operations of the party concerned. This provision does not apply to foreigners (Article XIV IACCP).

**§ 46a Language of the Court**

The language of the court of arbitration shall be German. The parties shall use this language for all written documents submitted and at all oral proceedings.

**§ 47 Hearing and Written Pleadings**

(1) At the hearing, the arbitral tribunal shall hear the parties and their allegations, statements and offers of evidence and investigate the facts which have given rise to the dispute.

(2) The arbitral tribunal may order the parties to appear in person to assist its investigation or to clarify obscure points.

(3) In cases of considerable importance or which are of a complicated nature, the arbitral tribunal may, in a first step, order the parties to submit written pleadings. These written pleadings are to be submitted in two identical counterparts, one of which shall be served on the opposite party and the other added to the court records. No consideration shall be given to any other written pleadings, in particular, to those of a party that fails to appear at the hearing.

**§ 48 Pre-trial Proceedings**

(1) In disputes concerning the correctness of an invoice or similar contracts in which a large number of disputed claims or counterclaims and reminders are at issue, or if the allegations of fact in the pleadings are of such a volume or of such a nature that prior to the hearing an arrangement and classification appears advisable in the interest of expediting and simplifying the hearing before the arbitrators, the arbitral tribunal may order pre-trial proceedings before one member of the arbitral tribunal or before the secretary. The results of such proceedings shall be recorded in minutes and presented to the arbitral tribunal.

(2) The parties shall have the right to repeat their claims on the subject matter to the arbitral tribunal.

**§ 49 Taking of Evidence**

(1) The arbitrators may examine parties, witnesses and experts, under oath and unsworn. The provisions of the Code of Civil Procedure shall apply to the taking of evidence under oath.

(2) If there are obstacles to taking evidence before the arbitral tribunal or if a party, a witness or an expert is not willing to be examined by the arbitral tribunal or sworn in, the competent local court (district court in Vienna) shall be requested to take the evidence. This request may also be made if the taking of evidence is to be carried out outside Vienna.

(3) The arbitral tribunal decides if it is necessary for the secretary to be present at the taking of evidence by the court for the clarification of the facts. The costs of the presence of the secretary, for which a separate deposit from the party furnishing the evidence may be requested, shall be decided in accordance with § 28. The decision to invite the secretary shall be communicated to the court with the request to take evidence.

(4) A request for the taking of evidence outside of Austria shall be made through the Federal Ministry of Justice unless it is known from experience that the foreign courts provide legal assistance upon the direct request of the court of arbitration.

(5) If there is a barrier to the taking of evidence that is of uncertain duration, or if the taking of evidence is doubtful or if it is to take place outside of Austria, then the court may determine a period after which, if it



expires without the taking of evidence, the proceedings may be continued without consideration of any outstanding evidence. This shall apply accordingly also in cases in which the taking of evidence is contingent on the timely deposit of an advance payment for the costs.

### **§ 50 Close of Hearing**

(1) When the necessary evidence has been taken and evidence offered but not taken has been rejected, the hearing shall be closed.

(2) The hearing may be declared closed without completing the taking of all admissible evidence if only isolated points of evidence remain to be heard and either both parties waive the right to such a hearing on the results of the taking of evidence or the arbitrators consider such hearing unnecessary. In this case, the award shall be made without a further hearing being scheduled once the relevant records of the taking of evidence have been received. The arbitral tribunal may order the re-opening of the hearing which has been declared closed if it becomes clear that additional clarification or supplementary information is required.

### **§ 51 Evaluation of Evidence**

(1) The arbitral tribunal shall decide, after careful consideration of the results of the entire proceedings and the taking of evidence, freely in accordance with its convictions whether an allegation of fact is to be deemed true or not.

(2) If it is established that a party is entitled to compensation for damage or is entitled other claims, but the proof of the amount of the damage or the claim cannot be ascertained or only under severe difficulties, the arbitral tribunal may assess the amount freely in accordance with its convictions upon petition or ex officio, even passing over an offer of evidence.

(3) If, of several claims made in the same statement of claim some are of minor importance in relation to the full amount and contested, and if the full clarification of all relevant facts entails difficulties which are unreasonable in relation to the claims, the arbitral tribunal may decide these claims in the same manner (para.2) freely in accordance with its convictions.

## **VII. Award**

### **§ 52 Award**

(1) The award on the principal subject matter shall deal with all claims for relief and defenses pertaining to it.

(2) The award may not be contrary to mandatory legal provisions.

(3) A deliberation by arbitrators shall precede the award.

(4) If a party properly served a summons fails to appear at the first hearing or refuses to take part in the hearing, the allegations of fact concerning the subject matter of the dispute presented by the party appearing before the court shall be deemed proven unless contradicted by evidence already on record, and on this basis, the claim for relief in the statement of claim shall be decided by an award by default upon petition of the party having appeared before the court.

(5) If there is no proof that the party failing to appear before the court was properly summoned, upon request of the party appearing, the determination of the award may be postponed to a date fixed by the arbitral tribunal and the hearing closed. If the due service of the summons is established by a certificate of receipt within the time frame fixed, an award by default shall handed down; otherwise, the petition for an award by default shall be rejected, and if possible, a new hearing scheduled.

(6) If a party properly summoned to a later hearing fails to appear or refuses to take part in the hearing, the hearing shall continue with the respective other party alone.

**§ 53 Time for Performance**

(1) Any obligation to pay money laid down in the award shall be generally due within 14 days; the arbitrators may, however, fix appropriate shorter or longer time limits for such payments or other types of performance. The time limit runs from the pronouncement of the award if both parties were present at the pronouncement, otherwise as of the serving of the written award to the party under the obligation to pay.

(2) Settlements agreed and recorded before the arbitrators have the same legal effect as an award of the arbitral tribunal. The time period for performance is determined by the contents of the settlement.

**§ 54 Pronouncement of the Award**

(1) The award is normally pronounced orally by the presiding arbitrator at the end of the hearing. If the award cannot be pronounced immediately at the end of the oral hearing, the award shall be issued – except in the case § 52, para. 5) within 8 days of the closing of the hearing. In such case, there is no special pronouncement of the award.

(2) The principal reasons for the decision shall be given when the award is pronounced. The pronouncement of the award does not require the presence of both parties.

(3) Unless both parties are present at the pronouncement of the award, the arbitral tribunal ex officio shall serve a written award to each party within 14 days.

(4) If both parties are present at the time of pronouncement of the award, the serving of a written counterpart of the award to the party that is a member of the exchange may be omitted if said party agrees to waive any right to raise objections to the arbitral award; otherwise, the arbitral tribunal shall serve ex officio the written arbitral award to the party which does not belong to the exchange within 14 days.

**§ 55 Written Award**

(1) The written award shall contain:

1. The name of the arbitral tribunal and the names of the arbitrators and the secretary that took part in the decision;
2. The names of the parties (first names und surnames), occupation, place of residence, party status in dispute, and names of representatives;
3. The award;
4. The reasons;
5. The date of issuance of the award.

The award and the reasons shall be highlighted.

(2) The written counterparts of the award for the court records and for the parties shall be signed by the presiding arbitrator and by the secretary. The counterpart for the court records shall be filed with the case within 8 days at the latest.

(3) The presiding arbitrator and the secretary are responsible for the correct production of the counterparts of the award.

**§ 56 Correction of the Award**

(1) The court of arbitration may correct typing errors or computational error or any other evident defects in the award or its counterparts at any time and may also correct any deviations in the counterparts from the decision passed and may insert details, which were left out contrary to the specifications of § 55 para.1 no. 1, 2 and 5.

(2) The correction shall be made in writing and shall be signed by the presiding arbitrator and the secretary.

(3) Unless a new counterpart of the award, which is to be marked "corrected award", is issued, the correction is to be noted on the counterpart for the court records, and, if possible, made visible on the counterparts requested by the parties.

#### **§ 57 Certificate of Legal Force**

(1) Upon request of one party, the final and binding nature of the award and its enforceability shall be confirmed in writing by the secretary on a counterpart of the award or settlement.

(2) As regards the steps to be taken for enforcement, the party shall apply to the competent court of law having jurisdiction.

### **VIII. Recourse against the Award**

#### **§ 58 Recourse against the Award**

There is no appeal against the arbitral award. National legislation is decisive for whether extraordinary remedies against the award are admissible.

#### **§ 59 Re-opening of the Case**

The re-opening of a case concluded by issuance of an award shall not be permitted.

### **IX. Arbitration Fees**

#### **§ 60 Arbitration Fees**

(1) The arbitration fees shall be fixed by the Federal Minister of Finance and of the Federal Minister for the Economy and Labor by Decree issued in agreement with the Federal Minister for Justice pursuant to Art. XIII Article XIV IACCP defining the amounts, due dates and methods of payment. Should the arbitration fees not be paid by the due date, no hearing shall be fixed and any hearings already scheduled shall be suspended until payment has been made.

(2) If procedural measures are necessary that involve costs, the court of arbitration shall make the execution of any such measures contingent on the deposit of an advance payment to cover the expected costs. If such a deposit is not made, the relevant procedural measures shall not be taken.

### **X. Final Provisions**

#### **§ 61 Use and Archiving of the Files**

(1) All case files, except for the minutes of the arbitrators on deliberations and votes are deemed official documents of record for both parties. They may inspect the files concerning their case and obtain copies and extracts at their own expense.

(2) The original of the award together with the minutes of the hearings and all other documents concerning the legal dispute (statement of claim, written pleadings, confirmations slips for documents served, minutes on the taking of evidence, etc.) shall be archived by the court of arbitration for ten years after the pronouncement of the award.

**§ 62 Court Office**

The administrative work for the court of arbitration shall be done by the exchange operating company.

**§ 63 Report on Activities**

In the first quarter of each year, the chairperson of the panel of arbitrators shall send precise statistical details of the activities of the court of arbitration in the previous year to the Federal Ministry of Justice. The reports shall be sent by the exchange operating company.

**§ 64**

The statutes of the Vienna Stock Exchange, Part II, Rules of the Court of Arbitration of 1 July 1990, promulgated by official notice No. 901 of the Chamber of the Vienna Stock Exchange of 6 August 1990 shall expire with the entry into force of this Decree.

**§ 65**

This Decree shall enter into force on the first of the month following the promulgation of the official notice.

Promulgated in Federal Law Gazette II No. 230 of 25 July 2000.