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Sixth Session of the Assembly of the International Solar Alliance  
31 October 2023  
New Delhi, Republic of India

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1 October 2023

***Agenda Item 15***

**Establishment of the proposed ISA Administrative Tribunal in accordance with the requirement of the ISA Staff Regulations**

**Summary**

The ISA Secretariat seeks to establish the Independent Arbitral Mechanism as required by the ISA Staff Regulations and Staff Rules to act as an appeal body for the resolution of staff and employment-related disputes for the organisation

## Establishment of the proposed ISA Administrative Tribunal in accordance with the requirement of the ISA Staff Regulations

### A. Context:

1. The ISA Staff Regulations provide for the establishment of an independent judicial or arbitral mechanism to adjudicate conclusively on appeals on staff and employment-related decisions. The relevant Regulations 12.3 and Rules 12.3 & 4 are reproduced below:

#### **Regulation 12.3**

- (a) *The Director-General shall make arrangements for staff members dissatisfied with the outcome of the internal appeal process under regulations 12.1 and 12.2 or with the disciplinary measure imposed after advice from the body established under regulation 11.2 to have access to an independent judicial or arbitral mechanism at the seat of ISA if they wish to present a recourse against the validity of the final decision taken by the Director General.*

#### **Rule 12.3: Appeal against non-confirmation of appointment**

- (c) *The Staff member may challenge the Director-General's final decision before the independent judicial or arbitral mechanism provided under Staff Regulation 12.3.*

#### **Rule 12.4: Appeal against decisions imposition of disciplinary measures**

- (a) *Decisions to impose disciplinary measures after advice from a body with staff participation under rule 11.4(b) may be appealed directly to the independent judicial or arbitral mechanism provided under Staff Regulation 12.3.*

### B. Proposal:

1. In accordance with the above mandate and requirement of the Regulation, the Secretariat has proposed the establishment of an arbitration appeal mechanism for the ISA Secretariat, known as the ISA Administrative Tribunal, to decide on appeals against decisions of the Director-General. The Tribunal will act as the final appellate body for the resolution of staff and employment-related disputes for the organisation.
2. The Tribunal to be established for the ISA secretariat will operate as an independent scheme, governed by the ISA Administrative Tribunal and Rules set out in Annex 1 to this report, which shall operate provisionally upon adoption by the Standing Committee until confirmed by the ISA Assembly.

### C. Steps taken by the ISA Secretariat:

1. The Secretariat has drafted the ISA Administrative Tribunal Statute and Rules, as presented before the Sixth Session of the ISA Assembly for approval.
2. The proposed financial requirement for the establishment of the ISA Administrative Tribunal is attached as Annex 2, detailing the cost of retaining the Arbitrators and sitting on cases (as at when required).

**D. Next steps:**

3. The ISA Assembly is, therefore, invited to:
  - 3.1. Consider the proposal for the establishment of an Independent Administrative Tribunal for the ISA to act as an appellate body on all staff and employment-related matters.
  - 3.2. Request the Director-General to submit to the Assembly annually, a report on the operation of the Administrative Tribunal, including concerns and recommendations by the Administrative Tribunal or the necessity for an amendment of the Tribunal Statute or Rules.

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**ANNEXURE 1**

DRAFT V.2.

**STATUTE OF THE INTERNATIONAL SOLAR ALLIANCE ADMINISTRATIVE  
TRIBUNAL AND RULES****Approved:**

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## Definitions

For the purpose of this statute, the expressions -

**"Staff member"** means any current or former member of the ISA staff who holds or has held a regular appointment or a fixed-term appointment of two years or more, any person who is entitled to claim upon a right of a member of the staff as a personal representative or by reason of the staff member's death, and any person designated or otherwise entitled to receive a payment under any provision of the Staff Retirement Plan or any staff benefit plan provided by the ISA. This expression includes Consultants and other officials of the ISA to whom the ISA Regulations and Rules are applicable to.

**"Employment-related matters", "contract of employment" and "terms of appointment"** includes all pertinent regulations and rules in force at the time of alleged non-observance, including the provisions of the Staff Retirement or Medical Plan and all benefit plans provided by the ISA to the staff.

**"Videoconferencing"** means a live, audio-visual interaction between two or more remote parties over the internet that enables a face-to-face relation.

**"Tribunal Member or Member of the Tribunal"** means an Arbitrator appointed in accordance with the provisions of this Statute.

**"The Committee"** means the Committee on Administrative Tribunal Matters.

## Part A. Establishment of the ISA Administrative Tribunal

### Article 1. Establishment

1. There is hereby established an Administrative Tribunal of the International Solar Alliance (hereinafter referred to as the "ISA") to be known as the ISA Administrative Tribunal ("The Tribunal").
2. The Tribunal is an adjudicative body that functions independently of the management of the ISA Secretariat. The independence of the Tribunal shall be guaranteed and respected by the ISA Secretariat.
3. The Tribunal shall be the final appellate authority on the decisions of the Director-General on employment-related matters, and shall hear and grant arbitral awards on application to the Tribunal by a staff member of the ISA or the ISA.
4. No such application as referred in Clause 3 above, shall be admissible, except on exceptional circumstances as decided by the Tribunal, unless the applicant has exhausted all other remedies available within the Staff Regulations and Rules.

### Article 2. Scope of application and time limits

1. The Tribunal shall hear appeals between a staff member (the "petitioner") and ISA in respect of final decisions taken by the Director-General in the following instances:

- a) After receipt of the final decision of the Director-General on an internal appeal process, regarding a claim of non-observance of the contract of employment or terms of appointment.
  - b) If no decision is received on an appeal; after the expiration of 30 calendar days of filing of an appeal to the Director-General;
  - c) Upon non-confirmation of a staff member's appointment by the Director General based on negative assessment of performance; or
  - d) After receiving a decision of the Director-General to impose a disciplinary measure.
  - e) Appeals with respect to specific performance after the applicant has exhausted all other remedies available within the ISA, and a notice received that the relief asked for or recommended will be granted, but such decision have not been granted within thirty (30) days after receipt of such notice.
2. Time
- a) Claims in respect of a final decision taken by the Director-General must be initiated within 45 calendar days of receipt of the decision by the Petitioner;
  - b) If such decision is not received per (i) above, after 30 calendar days from the date on which an appeal was filed to the Director-General line with the legal framework, the petitioner may file an appeal to the Tribunal within the following 15 days;
  - c) In case of non-confirmation of appointment, 20 working days from the date of receipt of a decision of non-confirmation of appointment based on a negative assessment during a probationary period.

### **Article 3. Appointment of Arbitrators**

#### **1. Procedure for Appointment of Arbitrators**

- a) The three members of the Tribunal shall be appointed by the Director-General from a list of five candidates to be drawn up by the "Committee on Administrative Tribunal Matters" (or "Committee") after appropriate consultations with the President of the ISA.
- b) For that purpose, the General Counsel or Head of the unit responsible for legal matters of the ISA shall constitute an advisory committee which shall be called the "Committee on Administrative Tribunal Matters" (or "Committee") composed of at least five members; including the General Counsel, the Chair of the staff advisory body in line with Regulation 12.2 and two senior staff members of the ISA and one such other member as may be appointed by the ISA President. The General Counsel or Head of the Unit responsible for legal matters shall act as Chair of the Committee.
- c) Vacancies and call for nomination to the Tribunal shall be widely advertised and best candidates selected by the Committee through a competitive selection process.
- d) The members of the Tribunal shall be appointed for a period of three years; and may be reappointed on a unanimous decision of the Committee on Administrative Tribunal Matters, presented to the Director-General, for a second term of three years and no more. A member appointed to replace a member whose term of office has not expired shall hold office for the remainder of the predecessor's term.
- e) The Director-General shall communicate to the ISA Assembly the appointment of an arbitrator(s) to the Tribunal.



## **2. Qualification of an Arbitrator**

- a) The Tribunal shall be composed of three members or panelists, all of whom shall be nationals of ISA member countries, but no two of whom shall be nationals of the same member state.
- b) In order to be considered for appointment in the Arbitration Panel.
  - i. The members of the Tribunal shall be persons of high moral character and must possess the qualifications required for appointment to high judicial office or possess recognised competence in relevant fields such as law, employment relations, international civil service and international organisation administration.
  - ii. The member must have experience in handling and resolving employment cases, preferably in the context of an international organisation and
  - iii. Due account shall be taken of the need to ensure geographical and gender balance among Tribunal members; and one Arbitrator must be of Indian origin.
- c) A Tribunal member shall not be a present or former staff member or Official of the ISA in the immediate past five years. A Tribunal member shall not be eligible to become a staff member or official of the ISA for a period of five years after the expiry of the tribunal appointment.
- d) Age limit for appointment of a Tribunal member shall be 75 years, provided that a member who turns 75 years during a running term, shall be allowed to complete the extant term, except if, by reasons of ill health, such a member is unable to fulfill the obligations of his duty.

## **Article 4. Secretariat of the Tribunal**

1. The Legal Unit of the ISA Secretariat shall serve as the Secretariat to the Tribunal, and shall be headed or managed by the General Counsel or the Head of the Unit responsible for legal matters.
2. The expenses of the Tribunal shall be borne by the ISA.
3. Arbitration proceedings and communication shall be conducted in English, provided that where a party does not speak English or produces or submits a document in another language, the Secretariat shall make adequate arrangements for qualified translation services.

## **Article 5. Applicable Law**

1. The Tribunal shall apply the Staff Regulations and the Staff Rules of ISA and any relevant subsidiary issuances creating rights and obligations for staff. The arbitrators may also apply general principles of the law of the international civil service.
2. The arbitrators may not dispense with consideration of the law and decide based on his or her view of what is fair or equitable in the case, or act as a conciliator in the matter.

## **Article 6. Right of Appeal and Jurisdiction**

1. Subject to the requisite rules on time limits for filing of applications for appeal, the Tribunal shall have appellate and final jurisdiction in the following instances of a petitioner's right of appeal.

- a) Appeal against the final decision of an internal appeal process on administrative decisions affecting the petitioner directly, including disciplinary measures imposed without prior advice from a staff participation body.
- b) Appeal against a decision to impose disciplinary measure(s), or disciplinary measure(s) imposed by the Director-General after advice from a body with staff participation.
- c) Appeal against a final decision of non-confirmation of staff appointment.

#### **Article 7. Powers of the Tribunal**

1. Adjudicate on Appeals as provided in this statute.
2. Order Specific Performance or rescission of the contested administrative decision after an appeal provided that, where the contested administrative decision concerns appointment, promotion or termination, the Arbitration Panel shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to the limits set out in compensation in this Article.
3. Compensation, which shall not exceed the equivalent of two years' net base salary of the petitioner.
4. Propose amendments for a better functioning of the Tribunal.
5. And other ancillary functions as a result of the obligations contained in this Statute.

#### **Article 8. Removal of Arbitrators**

1. An Arbitrator appointed under this statute may be removed before the expiration of the term, in any of the following instances:
  - a) Incapacity to discharge the functions of the Tribunal.
  - b) Ill health
  - c) Fraud or convicted of any criminal offence.
  - d) If found to be ineligible to have been appointed in the first instance.
2. The Committee on Administrative Tribunal Matters shall propose the removal of an Arbitrator and the Director-General shall with the consent of the President of the ISA, remove an Arbitrator from office.

#### **Article 9. Procedural Rules**

1. Subject to the provisions of this Statute, the Tribunal shall establish further procedural rules.
2. The rules shall include provisions concerning:
  - a) presentation of applications and the procedure to be followed in respect of them;
  - b) intervention by persons to whom the Tribunal is open under paragraph 3 of Article I, whose rights may be affected by the judgment;
  - c) other matters relating to the functioning of the Tribunal.

#### **Article 10. Assembly Report**

1. The Tribunal shall prepare an annual informative report or update for the ISA Assembly.

2. The report shall be presented to the Assembly by the Director-General on behalf of the Tribunal.

#### **Article 11. Conflict**

In the event of a conflict between the provisions of Part A and Part B of this document, the provisions of Part A will supersede.

#### **Article 12. Date of Entry into Force and Amendment**

1. This statute shall enter into force on the day following its approval by the ISA Assembly, and shall be applicable to any arbitral proceedings commenced after that date.
2. The Tribunal may from time to time, unanimously recommend amendments to this statute and rules, and the Director-General may in consultation with the President of the ISA make such amendments.
3. Amendments shall not be regressive in application, calculating from the date of the original cause of action.

#### **Part B. Procedural Rules for ISA Administrative Tribunal**

##### **Rule 1. Service of notices and calculation of periods of time**

1. Any notice or communication by or to the parties or by or to an arbitrator, **may be transmitted by registered mail, courier service, facsimile, or electronically as a PDF attachment** to an email.
2. If an address, including an e-mail address, has been designated by a party for purposes of arbitration proceedings, any notice shall be delivered to that party at that address, and if so delivered shall be deemed to have been received.
3. If, after reasonable efforts, delivery cannot be effected in accordance with paragraph 2 of this Rule, a notice or communication is deemed to have been received if it is sent to the addressee's last known habitual residence or mailing address by registered letter or any other means that provides a record of delivery or of attempted delivery.
4. A notice shall be deemed to have been received on the day it is delivered. A notice transmitted by electronic means is deemed to have been received on the day it is sent, allowing for time differences between the sender and the recipient.
5. For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

##### **Rule 2. Arbitrator/Chair of Panel**

1. Arbitration proceedings shall be conducted by a quorum of three arbitrators.
2. For the selection of the Chair, the names of the arbitrators in the Tribunal shall be arranged in

alphabetical order. A Chair shall be appointed for a period of six months, commencing from the inaugural date of the Arbitrator Panels. Chairs will rotate, beginning with the first arbitrator appearing on the alphabetical list.

3. The Chair will be the contact point for all correspondence between the Arbitration Panel and others. The Chair shall keep the other members of the Panel informed.
4. Where there is an imbalance in the quorum as a result of a vacancy, incapacitation or recusal of an Arbitrator from a case, the Chair of the Tribunal shall in consultation with the Director-General appoint a provisional Arbitrator for the purpose of that particular case and shall be entitled to a compensatory sitting allowance.

### **Rule 3. Disclosure by Arbitrator / Request to disqualify Arbitrator**

1. An arbitrator notified that he or she will be assigned a particular case or at any time during the course of the arbitration proceeding prior to the final award or termination of the proceeding, shall disclose to the other arbitrators in the Tribunal, any circumstances likely to give justifiable doubts as to his or her impartiality or independence. The other arbitrators shall consider the matter and, within fifteen (15) days of receipt of the disclosure, decide whether the arbitrator should continue or be replaced by a provisional arbitrator.
2. A party may request that an arbitrator be disqualified if the party becomes aware after the appointment of the arbitrator of facts or circumstances that, from a reasonable third person's point of view having knowledge of the relevant facts, gives rise to justifiable doubts as to the impartiality or independence of the arbitrator. The other arbitrators on the Arbitration Panel shall be asked to consider the matter and within fifteen (15) days of receipt of the disclosure, decide whether the arbitrator should continue or be replaced by a provisional arbitrator.

### **Rule 4. Recusal of Arbitrator**

1. In the event that a Tribunal member has to be recused in line with Rule 3 for any other reason, prior to or during the course of the arbitral proceedings, the Chair of the Tribunal shall in consultation with the Director-General appoint a provisional Arbitrator for the purpose of that particular case.
2. In the event of temporary vacancy, incapacitation of a Tribunal member or disqualification, the provisions of Rule 4(1) will be applicable.

## **Section A. Arbitral Proceedings**

### **Rule 5. Notice of Appeal and Registration Fees**

1. A petitioner seeking recourse to the Tribunal shall initiate the process by submitting a statement of claim to the General Counsel or Head of Unit responsible for legal matters.
2. The statement of claim shall include the following:
  - a) The full name, address, email address, telephone number and any other relevant contact details of the petitioner;

- b) The full name, address, email address, telephone number and any other relevant contact details of the petitioner's counsel or representative, if any, specifying whether counsel will serve for purposes of representation or assistance;
  - c) A copy of the final decision of the Director-General being appealed, or if no answer or notification is received on the appeal within the time limit, a statement to that effect;
  - d) A statement of the facts supporting the claim including the channels of administrative review of the decision and the results thereof;
  - e) The points at issue, including an explanation of which Staff Regulations, Staff Rules or subsidiary rules are alleged not to have been observed by the Director-General;
  - f) A reasoned explanation for any request for a hearing;
  - g) The legal grounds or arguments supporting the claim;
  - h) The relief or remedy sought;
  - i) A request that a copy of the statement of claim be forwarded to the designated arbitrator; and
  - j) A copy of all documents referred to by the petitioner in the statement of claim, each being identified as "Petitioner's Annex" on the top of the first page of each annex followed by the number assigned to each annex;
3. The statement of claim and all annexes shall be transmitted to the General Counsel or Head of Legal unit, in one original, signed by the petitioner and his or her counsel or representative, if any, together with annexed documents in accordance with these Rules and three copies of the statement of claim and annexes. Alternatively, the signed statement of claim and all annexes may be electronically transmitted in accordance with Rule 1.1.
  4. The petitioner shall certify on each copy, including any copy electronically transmitted that it is a true copy of the original and shall certify that any translation has been made by qualified translators.
  5. At the same time as the statement of claim is submitted, the petitioner shall transmit in full the registration fee of US\$150 for a petitioner at the General category, US\$200 for a petitioner at the National Officer category and US\$300 for a petitioner at the Professional category and above. The registration fee may be refundable in accordance with Rule 24.
  6. A submission of the statement of claim and registration fee constitutes a validly filed application to the Tribunal.

#### **Rule 6. Transmittal of Statement of Claim**

1. Upon receipt of the statement of claim, the General Counsel or Head of the Legal unit will notify the Chair of the Arbitration Panel, and the respondent, of the claim and transmit copies of the statement of claim and all annexes to both parties indicating the date on which it was received.
2. The filing of an application shall not have the effect of suspending execution of the decision contested.

#### **Rule 7. Respondent's Answer**

1. Within 30 days of the receipt of the statement of claim, the respondent shall communicate its answer in writing to the Chair of the Arbitration Panel.
2. The respondent's answer shall contain the following:

- a) The full name, address, email address, telephone number and any other relevant contact details of the representative of the Director-General;
  - b) A statement setting out facts and arguments in support of the decision being appealed
  - c) A reasoned explanation for any request for a hearing;
  - d) The legal arguments supporting the answer;
  - e) The factual and legal grounds of any counterclaim against the petitioner, and the relief or remedy sought;
  - f) A copy of all documents referred to by the respondent, unless already submitted by the petitioner, identified by the words "Respondent's Annex" on the top of the first page of each annex followed by the number of each annex;
3. The respondent's answer, signed by the Director-General or his or her authorised representative, and all annexes shall be transmitted to the Chair of the Arbitration Panel in one original version and three copies. Alternatively, the signed answer may be electronically transmitted to the Chair in accordance with Rule 1.1.
  4. The respondent shall certify on each copy of the answer, including any copies electronically transmitted, that it is a true copy of the original, and shall certify on each translation that it has been made by qualified translators.
  5. After ascertaining that the requirements of this Rule are met, the Chair shall transmit a copy of the answer to the petitioner. If the formal requirements of this Rule are not fulfilled, the Chair may require the respondent to modify the answer to conform to the requirements of this Rule within a specified time. Once the corrections are properly made, the Chair shall transmit a copy of the modified answer to the petitioner.

#### **Rule 8. Rejoinder and Observations on Rejoinder**

1. The petitioner may, within 30 days of the date on which the answer is received by him or her, submit a rejoinder of preferably five pages to the Chair, commenting on the respondent's answer.
2. The respondent may, within 30 days of the date on which the rejoinder is received by him or her, submit to the arbitrator observations on the rejoinder of preferably five pages.
3. Any document referred to in the rejoinder and the observations on the rejoinder, as the case may be, shall be annexed thereto, unless already before the Chair. The number of the first annex to the rejoinder or observations on the rejoinder shall be the number following that given to the last annex submitted by the party concerned in the statement of claim or in the answer, as the case may be.
4. The rejoinder and the observations on the rejoinder, and any annexes thereto, shall be transmitted in an original and three copies to the Chair. Alternatively, they may be electronically transmitted to the Chair in accordance with Rule 1.1.
5. The petitioner and the respondent shall certify on each copy of the rejoinder and observations on the rejoinder, as the case may be, including any copies electronically transmitted to the Chair, that it is a true copy of the original, and shall certify on any translation that it has been made by a qualified translator.
6. After ascertaining that the requirements of this Rule are complied with, the Chair shall transmit a copy of the rejoinder and observations to the other party. If the formal requirements of this Rule are not

fulfilled, the Chair may require that the rejoinder or observations on the rejoinder conform to the requirements of this Rule within a specified time. Once the corrections are properly made, the Chair shall transmit a copy of the rejoinder or observations on the rejoinder to the other party.

7. Subject to Rule 9, the written proceedings are closed after the observations on the rejoinder are filed or after the time limit for such filing has expired.

#### **Rule 9. Further Written Statements**

The Chair may require the parties to submit further written statements and shall fix the periods of time for communicating such statements.

#### **Rule 10. Representation and Assistance by Counsel**

1. Each party may choose to be represented or assisted by counsel, who shall be a person of the choice of the party concerned, provided each party informs the other party and the Chair of the full name and contact details of his or her counsel, and specifies whether counsel will act for purposes of representation or assistance.
2. The cost of retaining or appointing counsel to represent or assist a party shall be borne by that party.

#### **Rule 11. Jurisdiction**

1. The Tribunal shall have the power to rule on his or her jurisdiction.
2. A plea that the Tribunal does not have jurisdiction shall be raised no later than in the respondent's answer.
3. A plea that the Tribunal is exceeding the scope of his or her authority shall be raised as soon as the matter alleged to be beyond the scope of the authority of the Chair occurs.
4. The Tribunal may, in the cases referred to in this Rule 11.2 and 11.3, admit a later plea if he or she considers the delay justified.
5. The Tribunal may rule on a plea concerning jurisdiction either as a preliminary question or in the award on the merits.

#### **Rule 12. Interim Measures**

1. The Chair may, at the request of a party, grant interim measures.
2. An interim measure is any temporary measure prior to the issuance of the award by which the Chair orders a party to take action that would prevent, or orders a party to refrain from taking action that is likely to cause imminent irreparable harm, or to prejudice the arbitral process itself, for instance a direction to preserve evidence that may be relevant and material to the resolution of the dispute.

#### **Rule 13. Evidence**

1. Each party shall have the burden of proving the facts relied on to support its statement of claim or answer.

2. The Tribunal may require the parties to produce documents or present other evidence within such a period of time as the Chair shall determine.
3. The Tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

#### **Rule 14. Hearings**

1. If requested in the statement of claim or the answer, the Tribunal may decide to hold a hearing and shall give the parties adequate advance notice of the date, time and place thereof. The hearing shall be limited to enabling the parties to present oral arguments in support of their pleadings.
2. Witnesses may be heard under the conditions and examined in the manner set by the Chair.
3. Attendance to hearings shall be limited to the parties and their representatives, and such other persons, including any witnesses, whose attendance is authorised by the Chair. A witness may be present at the proceedings only while the said witness is being examined, except that a witness who is a party shall not, in principle, be asked to leave.
4. Whenever possible and taking into consideration such factors as fairness to the parties, administrative burden and cost, the Tribunal shall conduct any hearing through means of telecommunication that do not require the physical presence of the parties, counsel or representatives, or witnesses, such as by videoconference or teleconference.
5. The Chair shall determine the sequence of any oral proceedings. The parties shall, however, retain the right to comment briefly on any statement to which they have not replied.
6. In exceptional circumstances where proceeding with an award may effect manifest injustice in a matter; the Chair in consultation with other members of the Tribunal, may decide to reopen the hearing at any time before the award is made.

#### **Rule 15. Default**

If a party, duly notified under these Rules, fails to submit an answer, a rejoinder or observations on the rejoinder, or fails to appear at a hearing or to submit documents or evidence requested by the Tribunal, without showing sufficient cause for such failure, the Tribunal may proceed with the arbitration on the basis of the material already before the Arbitration Panel.

#### **Rule 16. Waiver of Right to Object**

A party who fails to object promptly to any non-compliance with these Rules shall be deemed to have waived the right to make such an objection, unless the party can demonstrate that, under the circumstances, its failure to object was justified.

#### **Rule 17. General Provisions**

1. Subject to these Rules, the Chair may conduct the arbitration in such manner as he or she considers appropriate, provided that the parties are treated with equality and fairness. The Chair shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for



resolving the dispute between the parties. Procedural matters not covered by these Rules shall be dealt with by decision of the Chair in light of the facts of the case under consideration.

2. As soon as practicable, the Chair shall establish the timetable of the arbitration and notify the parties accordingly, including deadlines for submission of written pleadings. The Chair may at the request of a party, after inviting the other party to comment on such request, extend or abridge any period of time prescribed under these Rules or contained in the timetable.
3. The arbitration shall take place at the Headquarters of ISA in India, after conclusion of the exchange of written pleadings. Every effort shall be made to limit travel expenses by ISA's videoconference facilities to the extent possible.
4. A party may not submit evidence of any informal settlement efforts of the claim to the Chair, and may not refer to any such efforts in written pleadings or oral arguments made before the Chair.

## Section B. The Award

### Rule 18. Settlement of Proceedings or Other Grounds for Termination

1. If, before the award is made, the parties agree on a settlement of the dispute, the Tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by the parties and accepted by the Tribunal, record the settlement in the form of an award on agreed terms. The Tribunal is not obliged to give reasons for such an award.
2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in this Rule 18.1, the Chair shall inform the parties of his or her intention to issue an order for the termination of the proceedings and give them 30 days to comment. An order terminating the proceedings shall set out the reasons for such action.
3. The Chair shall send copies of the award on agreed terms or an order for termination of the arbitral proceedings to the parties.

### Rule 19. Scope of Award

1. The Tribunal, through the Chair may order one or both of the following:
  - a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Arbitration Panel shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to the limits set out in sub-paragraph 1(b);
  - b) Compensation, which shall not exceed the equivalent of two years' net base salary of the petitioner.
2. The Tribunal shall not award exemplary or punitive damages.
3. If the contested administrative decision is based on an assessment of the efficiency or relative efficiency of the petitioner, the Tribunal shall consider only whether the applicable procedures were followed and whether the decision was improperly motivated by prejudice or by some other extraneous factor.
4. Should the Tribunal find that the procedure prescribed in the regulations or rules of the respondent institution had not been duly observed, it may, order the case remanded for institution or correction of

the required procedure.

5. In all applicable cases, compensation fixed by the Tribunal shall be paid by the respondent institution.

#### **Rule 20. Form and Implementation of the Award**

1. The award of the Tribunal shall be taken by majority vote and shall be final and binding. The vote of one or more tribunal members dissenting from the majority vote, or dissenting as to the grounds upon which the judgment was based or any of its conclusions, shall, together with the reasons for dissent, be separately attached to the award itself.
2. In the event of an equality of votes, the Chair shall have a casting vote.
3. The award shall be in writing, signed and dated by all Tribunal members. The reasons upon which the award is based shall be stated, other than in the case of an award on agreed terms under Rule 18(1).
4. The award shall be final without appeal and binding on the parties.
5. The Chair shall notify the parties of the conclusion of an award and promptly the signed award to the Tribunal Secretariat.
6. The original copy of the award shall be filed in the archives of ISA. A copy of the award shall be delivered to each of the parties concerned
7. The Director-General shall implement the award promptly and take any action that is required of ISA by the award.
8. The Director-General shall make the award public on ISA's website. The name, personal details and functional title of the petitioner shall be redacted, if requested by the petitioner.

#### **Rule 21. Correction of the Award**

1. Within 30 days after the receipt of the award, a party, with notice to the other party, may request the Chair to correct in the award any error in computation, any clerical or typographical error, or any error or omission of a similar nature. If the Chair considers that the request is justified, he or she shall make the correction within 45 days of receipt of the request.
2. The Chair may within 30 days after the communication of the award make such corrections on his or her own initiative.
3. Corrections shall form part of the award. They shall be in writing and shall be transmitted to the parties by the Chair.

### **Section C. Costs**

#### **Rule 22. Fees and Costs of Arbitrator**

The fees and costs of the arbitrator(s), as established by the Director-General, shall be borne by ISA.

#### **Rule 23. Support Costs**

The ISA shall also bear the cost of necessary support services, including the provision of video conferences

arranged at the request of the Tribunal.

**Rule 24. Other Costs**

1. Each party shall bear its own costs in relation to the arbitration, including the costs of its counsel or representative, travel-related costs, communications, office supplies, etc.
2. The Tribunal has authority to order ISA in the award, giving reasons thereof, to pay reasonable costs incurred by the petitioner, in whole or in part.
3. The Tribunal shall also decide in the award whether the registration fee required by Rule 5.5 should be refunded to the petitioner, in whole or in part. The registration fee shall be refunded to the petitioner unless the arbitrator determines that the claim was frivolous or an abuse of the arbitration process.
4. Should the Chair determine that a party has manifestly abused the arbitration process, he or she may award costs against that party in an amount fixed by the Tribunal.

## ANNEXURE 2

### ISA ADMINISTRATIVE TRIBUNAL PROPOSED FEE STRUCTURE

#### Remuneration:

Arbitrators appointed to the ISA Administrative Tribunal shall be compensated with a retainer fee of USD 10,000 annually.

Where the Arbitrators have a case referred for their adjudication, the schedule of payment may include:

#### Arbitration Fees:

- i. A fixed daily fee with a minimum and maximum placed on the number of days that would be devoted to the particular case.
- ii. The daily rate shall be US\$2,000 per day. The daily rate shall be subject to periodic review by the Director-General of ISA.
- iii. In all cases, the arbitrator would be remunerated for two (2) days' work in recognition of his or her participation in the process and of the need to familiarise himself or herself with the claim and with the materials necessary to reach a decision.
- iv. If more time, up to an additional three (3) days, is needed, the arbitrator shall, prior to incurring such additional time, state in writing for the record the reasons for the additional days (such as, volume of materials produced, complexity of the claim, need for extensive research, etc.). The arbitrator's statement shall be subject to review by external auditors at the time of audit of ISA's financial statements.
- v. In truly exceptional cases due to the special features of the case, the arbitrator could request the Director-General, in consultation with the Head of Legal, to approve payment for a period of longer than five (5) days overall, explaining the reasons for the request. The arbitrator's statement shall be subject to review by external auditors at the time of audit of ISA's financial statements.

#### Travel Expenses

In exceptional cases where hearings cannot be held using telecommunication methods and an arbitrator is required to travel in order to conduct a hearing at the seat of ISA, the Head of Legal Unit may approve travel. The arbitrator shall receive travel expenses (transportation, accommodation, meals, incidentals, and airport transfer expenses) on conditions similar to those applicable to staff members in the Professional category.