

BEST PRACTICE GUIDELINES OF NORDIC OFFSHORE AND MARITIME ASSOCIATION (GUIDELINES)

1. Introduction

- 1.1 The aim of these guidelines is to ensure a predictable, transparent, cost-efficient and fair arbitration process, within the framework of the Rules of NOMA (the Rules). At the appropriate stage of the proceedings each party shall be given a reasonable opportunity to present its case. The arbitral tribunal shall, in exercising its discretion, conduct the proceedings in a manner avoiding unnecessary delay and expense and to ensure a fair and efficient process for resolving the parties' dispute. The arbitral tribunal shall take these Guidelines into consideration when exercising its discretion.
- 1.2 The arbitral tribunal shall not make orders contrary to any agreement reached between the parties to the proceedings, unless such agreement is contrary to due process or mandatory rules.
- 1.3 The language of arbitration shall be either in English, a Scandinavian language or a combination thereof, see the Rules Article 17 and otherwise as set out below. The language shall be determined at the first case management conference or in a subsequent procedural order, see Clause 3 hereof.
- 1.4 Following the establishment of an arbitral tribunal in accordance with the Rules Articles 6, 7 and 8, the sole arbitrator or the panel of arbitrators shall conduct the arbitration in accordance with these Guidelines.

2. Commencement of arbitration

- 2.1 As soon as practicable after its constitution, the arbitral tribunal shall in consultation with the parties make such orders and directions as set forth in these Guidelines, and the parties shall follow these Guidelines subject to any agreement between the parties or orders by the arbitral tribunal to the contrary. All communications between the arbitral tribunal and each party shall be communicated by that party to the other parties to the proceedings.
- 2.2 The arbitral tribunal may meet at any location it considers appropriate for deliberations. Unless otherwise agreed by the parties, the arbitral tribunal may also meet at any location it considers appropriate for any other purpose, including hearings.
- 2.3 If the parties have not previously agreed upon the place of arbitration, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case. The award shall be deemed to have been made at the place of arbitration.
- 2.4 If at an appropriate stage of the proceedings any party so requests, the arbitral tribunal may hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be

conducted on the basis of documents and other materials. If a party request an oral hearing for presentation of evidence and arguments, and provided the arbitration agreement does not provide for written proceedings only, the arbitral tribunal shall allow an oral hearing before making its award.

3. Case management conference ("CMC")

- 3.1 When the arbitral tribunal has been constituted, the presiding arbitrator of the arbitral tribunal shall as soon as possible convene a case management conference ("CMC"). In cases of minor complexity or if the case shall be decided without an oral hearing, a CMC shall only be called if deemed to be proportional to the costs, time and value of the claim(s).
- 3.2 The object of a CMC is to agree on the procedure to be followed to ensure a prudent and cost-effective resolution of the dispute, within a reasonable time, taking into account the size and complexity of the claim(s), and giving each party the opportunity to present its case.
- 3.3 A CMC can be conducted through a physical meeting, video or telephone conference or by similar means. A CMC shall be held as many times as appropriate
- 3.4 At the start of the first CMC, both parties should give a short description of the nature of the dispute if same has not been given in the letter of appointment of the arbitrators.
- 3.5 During the first CMC, the following matters should be discussed and sought to be agreed upon:
 - a) Whether the whole or parts of the decision can be determined on documents only;
 - b) Whether separate issues or claims should be subject to decided separately;
 - c) The length of the main hearing;
 - d) Scheduling of the main hearing;
 - e) Venue for the main hearing;
 - f) Language;
 - g) Translations of evidence and sources of law;
 - h) Deadlines for statement of claim, statement of defence, subsequent pleadings, and for presentation of new arguments and evidence pursuant to 3.7 e) hereof, etc.;
 - i) Whether any of the parties intends to present written witness statements;
 - j) Expert witnesses and potential expert reports, and if a joint expert should be appointed;
 - k) Possible allocation of time during the case preparation for mediation/settlement discussions;
 - l) Security for the arbitrators' fees and cost;
 - m) Potential termination fee to the arbitral tribunal;

- n) Document management during the case preparations;
- o) Confidentiality of the Award; and
- p) Other items to facilitate a quick and cost-effective procedure to achieve a resolution of the dispute.

To assist the arbitral tribunal and the parties in their preparations and handling of the above matter at the first CMC, the attached CMC matrix should be used as basis and guidance.

- 3.6 Following a CMC, the arbitral tribunal shall issue a Procedural Order (PO) or a Minutes of Meeting reflecting the agreement reached in the CMC or any orders given by the arbitral tribunal.
- 3.7 Subject to agreement in the CMC, or POs given by the arbitral tribunal, the following guidelines shall apply:
- a) Statement of claim shall be submitted within 28 days after the first CMC;
 - b) Statement of defence and possible counter claim shall be submitted within 28 days following the submission of the statement of claim;
 - c) Reply to statement of defence (and counter claim) shall be submitted within 21 days thereafter;
 - d) Statement from the Respondent (rejoinder) shall be submitted within 21 days thereafter;
 - e) The time limit for presentation of new arguments and new evidences is 14 days prior to the date of the oral hearing. Even if new arguments and evidences are submitted before the 14-day period, the arbitral tribunal may decide that such new arguments and/or evidences will not be admissible if they are submitted too late for the other party to be able to submit counter-arguments and evidence in time for the hearing, and the party providing the new arguments or evidence should have submitted the arguments or evidence earlier; and
 - f) Provided an oral hearing is agreed, the hearing shall be scheduled as soon as reasonably possible and in any case no later than 6 months from commencement of the arbitration if the hearing is estimated to be 4 days or less, or within 12 months if the hearing is estimated to last for more than 4 days.
- 3.8 The arbitral tribunal may amend the dates for submitting statement of claim, statement of defence and any further pleadings. The arbitral tribunal shall be cautious to accept request for significant postponement if the other party objects to the request.
- 3.9 The arbitral tribunal may be entitled to a termination fee if the case is settled or terminated prior to a hearing or shortly after the hearing has commenced. The terms of such fees ought to be decided at a CMC. The termination fee will be paid in addition to the compensation payable for actual time spent by the arbitral tribunal up to the termination of the case.

4. Deposit and costs

- 4.1 The arbitral tribunal may request the parties to deposit equal amounts as security for the costs referred to in the Rules Article 35, paragraphs 2 (a) to (c).
- 4.2 The arbitral tribunal may at any time request supplementary deposits from the parties.
- 4.3 If the required deposits are not paid in full within 30 days after the receipt of the request, the arbitral tribunal shall inform the parties in order that one or more of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.
- 4.4 If the Respondent does not pay the deposits required, and same is paid by the Claimant, may request that the arbitral tribunal issue a partial award concerning the deposit payment(s) the Claimant has made on behalf of the Respondent..
- 4.5 After a termination order or when the final award has been made, the arbitral tribunal shall render an account to the parties of the deposits received and return any positive balance to the parties.

5. Language and translations

- 5.1 Unless agreed otherwise by the parties, the arbitral tribunal decides the language to be used in the proceedings. English language shall normally be used, unless the parties, their representatives, and the arbitrators are Scandinavian. The arbitral tribunal may decide that each party may submit pleadings and other written statements in Norwegian, Swedish or Danish. This also applies to any oral statement during the proceedings.
- 5.2 The arbitral tribunal may order that any document submitted in its original language shall be accompanied by a certified or office translation into English or the language determined by the arbitral tribunal.
- 5.3 The arbitral tribunal will normally not order legal precedencies, judgements etc. in the Scandinavian languages to be translated.

6. Statement of claim

- 6.1 The Claimant shall communicate its statement of claim in writing to the Respondent and to each of the arbitrators within a period of time to be determined by the arbitral tribunal.
- 6.2 The statement of claim shall include the following:
 - a) The names and contact details of the parties (if not already communicated same to the other party and the arbitral tribunal);
 - a) A statement of the facts supporting the claim, containing a reasonable degree of specification;

- b) Evidence upon which the Claimant intends to rely. Documents offered as evidence and available to the party relying on them shall be filed as exhibits to the written submissions;
- c) The points at issue;
- d) The legal grounds or arguments supporting the claim; and
- e) The relief or remedy sought.

6.3 A copy of any contract or other legal instrument which form the basis of the claim, and a copy of the arbitration agreement shall be annexed to the statement of claim.

7. Statement of defence

7.1 The Respondent shall communicate its statement of defence in writing to the Claimant and to each of the arbitrators within a period of time to be determined by the arbitral tribunal.

7.2 The statement of defence shall include the following:

- a) A reply to the particulars of clause 6.2 (b) to (f), including an admission or denial of the specific claim (or part of the claim) with a reasonable degree of specification;
- b) Evidence upon which the Respondent intends to rely. Documents, other than those exhibited to the statement of claim, offered as evidence and available to the party relying on them shall be filed as exhibits to the written submissions.
- c) In its statement of defence, or at a later stage in the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances, the Respondent may make a counterclaim or rely on a claim for the purpose of a set-off provided that the arbitral tribunal has jurisdiction over it.
- d) The provisions of clause 6, shall apply to a counterclaim, or a claim relied on for the purpose of a set-off.

7.3 The arbitral tribunal shall reject the submission of the counterclaim if it is not within the scope of the arbitration.

8. Default

8.1 If, within the period of time fixed by the arbitral tribunal, without showing sufficient cause the Claimant has failed to communicate its statement of claim, and if the Respondent so requests, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings, unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so.

8.2 If the Respondent has failed to communicate its response to the notice of arbitration or its statement of defence, the arbitral tribunal shall order that the proceedings continue, without treating such failure in itself as an admission of the Claimant's allegations.

- 8.3 The provisions of clause 8.2 shall apply to a Claimant's failure to submit a defence to a counterclaim or to a claim for the purpose of a set-off.
- 8.4 If a party, duly notified, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.
- 8.5 If a party, duly invited by the arbitral tribunal to produce documents, exhibits or other evidence, fails to do so within the established period of time, without sufficient cause, the arbitral tribunal may proceed with the award on the evidence before it.

9. Subsequent pleadings

- 9.1 During the course of the arbitral proceedings, a party may amend or supplement its claim or defence, including a counterclaim or a claim for the purpose of a set-off. The arbitral tribunal may decide that it is inappropriate to allow such amendment or supplement of the claim having regard to the delay in making it, prejudice to other party, the risk of having to postpone the scheduled hearing, or any other circumstances. However, a claim or defence, including a counterclaim or a claim for the purpose of a set-off, may not be amended or supplemented in such a manner that the amended or supplemented claim or defence falls outside the jurisdiction of the arbitral tribunal.
- 9.2 In subsequent pleadings the parties shall endeavour to narrow the issues in dispute. Each party can demand that the other party present evidence which may be relevant for the case. Such requests shall be as specific as reasonably possible. The arbitral tribunal may draw adverse inference from a party's failure to provide evidence without a justifiable cause. However, the arbitral tribunal shall evaluate all the evidence presented. The arbitral tribunal may state its opinion as to whether the request for documentation should be complied with.

10. Evidence

- 10.1 Both parties shall provide relevant evidence and information to enable the arbitral tribunal to resolve the dispute on a correct factual basis. This includes the production of evidence in the statement of claim (clause 6.3 above) and statement of defence (clause 7.2(b) above). Both parties shall endeavor to avoid any unnecessary increase of documents or evidence which may result in an unnecessary protraction of the proceedings.
- 10.2 The arbitral tribunal will use the NOMA Rules on the Taking of Evidence.
- 10.3 Witnesses, including expert witnesses, who are presented by the parties to testify to the arbitral tribunal on any issue of fact or expertise, may be any individual, notwithstanding that the individual is a party to the arbitration or in any way related to a party.
- 10.4 Testimony by expert witnesses shall be presented by a signed written statement unless otherwise directed by the arbitral tribunal.

- 10.5 The arbitral tribunal may direct that other witnesses be presented by signed written statements only if the arbitral tribunal is satisfied that, by having regard to all relevant circumstances, this contributes to an efficient and cost-effective resolution of the case.
- 10.6 At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within a period of time set by the arbitral tribunal.
- 10.7 The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

11. Hearings

- 11.1 In the event of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof.
- a) Witnesses, including expert witnesses, shall be heard and examined under the conditions and in the manner set by the arbitral tribunal.
 - b) Hearings shall be held *in camera* unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses, including expert witnesses, during the testimony of such other witnesses, except that a witness, including an expert witness, who is a party to the arbitration shall not normally be asked to retire. The arbitral tribunal may allow witness, including an expert witness, who is closely connected to a party to the arbitration to be present.
 - c) The parties and/or their legal representatives shall be present at the hearing.
 - d) The arbitral tribunal may direct that witnesses, including expert witnesses, be examined through means of telecommunication (such as videoconference).
- 11.2 The arbitral tribunal may conduct a hearing for the presentation of evidence or for oral submissions on the merits of the dispute. Subject to the parties right to present their case, and subject to any decision by the tribunal to the contrary, the time allowed during the hearing shall be allocated equally between the parties.
- 11.3 The arbitral tribunal may allow, refuse or limit the appearance of any witness, including expert witnesses.
- 11.4 The arbitral tribunal may allow that a witness's testimony, including testimonies from expert witnesses, is submitted in writing, e.g. as a signed statement, including rebuttal statements. In that case, any party may require that the witness attends the hearing for oral examination. If the witness fails to attend the oral examination, the arbitral tribunal may, if compelling reasons so require, and in its discretion, nevertheless accept the written statement as evidence in the case.
- 11.5 The hearing will normally consist of the following stages:
- a) The Claimant begins with an opening statement in which it frames the case for the arbitral tribunal by explaining the most important factual elements of the case, providing and explaining essential evidence and outlining key legal issues;

- b) The Respondent supplements the Claimant's presentation, and makes its defence;
- c) The Claimant's representative is examined. The Claimant initiates the questioning followed by the Respondent. The Claimant may thereafter ask additional questions, and the same applies to the Respondent. The arbitral tribunal may question and examine the Claimant's representative at any given time;
- d) The Respondents' representative is examined. The Respondent initiates the questioning followed by the Claimant. The Respondent may thereafter ask additional questions, and the same applies to the Claimant. The arbitral tribunal may question and examine the Respondent's representative at any given time;
- e) The Claimant's witnesses are examined. The Claimant initiates the questioning followed by the Respondent. The arbitral tribunal may question and examine the Claimant's witnesses at any given time;
- f) The Respondent's witnesses are examined. The Respondent initiates the questioning followed by the Claimant. The arbitral tribunal may question and examine the Respondent's witnesses at any given time;
- g) Expert witnesses are normally present during examination of other expert witnesses, e.g. by cross examination if the arbitral tribunal finds it appropriate;
- h) The Claimant present a closing statement in which the Claimant provides a summing-up of the evidences and legal arguments;
- i) The Respondent present a closing statement in which the Respondent provides a summing-up of the evidences and legal arguments;
- j) The Claimant present a short reply to Respondent's closing statement;
- k) The Respondent is allowed a short rebuttal to Claimant's reply to Respondent's closing statement; and
- l) The arbitral tribunal may give each party's representative a possibility to make a final closing remark without the interference of the parties' counsel.

12. The Award

- 12.1 When there is more than one arbitrator, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators.
- 12.2 All awards shall be made in writing and shall be final and binding on the parties. The parties shall carry out all awards within the time limit set by the tribunal, or otherwise without delay.
- 12.3 The arbitral tribunal shall state the reasons for its award including a short summary of the relevant facts, the facts on which the arbitral tribunal bases its award, and the legal principles and sources applied. If the award is not unanimous, the dissenting arbitrator shall state the reasons for the dissent.
- 12.4 The arbitral tribunal may make separate awards on different issues at different times.

- 12.5 An award shall be signed by the arbitrators and it shall contain the date on which the award was made and indicate the place of arbitration. Where there is more than one arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature.
- 12.6 The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. The arbitral tribunal may apportion the costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.
- 12.7 The arbitral tribunal shall in the final award or, if it deems appropriate, in any other award, determine any amount that a party may have to pay to the other party as a result of the decision on allocation of costs. In order to ensure adequate preparations and a smooth and effective arbitral process, the arbitral tribunal, when determining the allocation of costs, may take into account any unnecessary presentation of evidence or proceedings and/or whether the successful party has rejected a reasonable offer of settlement.

November 2017

Attachments:

- **Matrix**
- **Taking evidence**

CMC- Matrix

Matters to be discussed and agreed during CMC		Best practice	Other recommendations / practical tip
PART I – Basic planning			
1.1	Presentation of the dispute	<p>The Claimant provides a brief outline of the key elements of its position and the relief sought.</p> <p>The Respondent is given an opportunity to provide its comments.</p>	
1.2	Decision based on written evidence	It should be discussed whether all or parts of the issues of the dispute can be determined based on documents only.	
1.3	Splitting the proceedings and Part Award(s)	It should be discussed whether the proceedings in respect of one or some of the claims, or in respect of one or more of the points in dispute in a claim, shall be heard and decided separately.	If the proceedings are split, time for potential subsequent hearings should still be reserved.
1.4	Length of the main hearing	Based on the parties' knowledge of the dispute, it should (at least on a preliminary basis) be agreed how many days / weeks are necessary to conduct the main hearing.	If it is difficult for the parties to assess the amount of time necessary to conduct the main hearing, extra days / weeks should be reserved to be able to schedule the main hearing.

Matters to be discussed and agreed during CMC		Best practice	Other recommendations / practical tip
1.5	Scheduling of the main hearing	The main hearing should be scheduled at a time where the parties' counsel and all members of the arbitral tribunal are available. The hearing should be scheduled no later than six months from the first CMC if the hearing is estimated to last five days or less or within 12 months if the hearing is estimated to last more than five days.	<p>Generally, a four day a week hearing is recommended.</p> <p>If a main hearing lasts more than six weeks, there should be a "break week" in the middle of the proceedings. If possible, at least one day off should be allowed between the witness examinations and the start of the closing arguments.</p>
1.6	Venue for the main hearing	A venue for the main hearing should be booked as soon as possible at a place agreed by the parties.	<p>One of the parties should be responsible for presenting options to the other party and the arbitral tribunal.</p> <p>If the parties do not agree on the venue, the arbitral tribunal should reserve or book the venue.</p> <p>The contract with the lessor should be entered into jointly by the parties' counsels.</p>

Matters to be discussed and agreed during CMC		Best practice	Other recommendations / practical tip
1.7	Language	<p>If not already agreed, the language of the pleadings and main hearing should be agreed, as well as the language of the Award.</p> <p>If no agreement is reached in the CMC, the arbitral tribunal decides on the appropriate language.</p>	It may be possible to have a different language during the main hearing than in the pleadings.
1.8	Translations of evidence	<p>Evidence in English does not require translation.</p> <p>Evidence not in English or the language of the proceedings, may be ordered translated into English, but it should be considered whether only relevant parts require translation.</p>	
1.9	Translation of sources of law	If the language to be used to determine the dispute is English, the arbitral tribunal will normally not order legal precedencies, judgements etc. to be translated from a Scandinavian language to English.	

Matters to be discussed and agreed during CMC		Best practice	Other recommendations / practical tip
1.10	Deadlines for statement of claim, statement of defence, subsequent pleadings and potential closing submissions	Based on the dates for the main hearing, deadlines should be agreed for the statement of claim, the statement of defence, subsequent pleadings, potential closing submission and a cut-off date for presenting new evidence.	<p>It is recommended that the statement of claim is submitted 28 days after the first CMC and the statement of defence 28 days thereafter.</p> <p>It is normally recommended to have two pleadings from each party after the statement of defence with a deadline of 21 days.</p> <p>The time limit for presentation of new arguments and evidence should be 14 days prior to the start of the main hearing. In larger cases this deadline should be considered to be set earlier than 14 days.</p> <p>Closing submissions are generally not necessary.</p>
1.11	Witnesses of fact	<p>It should be clarified whether any of the parties intends to present written witness statements. If yes, deadlines for this must be set.</p> <p>A deadline for presentation of the parties' preliminary list of witness of fact should be agreed.</p>	

Matters to be discussed and agreed during CMC		Best practice	Other recommendations / practical tip
1.12	Expert witnesses	<p>It should be discussed whether a joint expert witness/witnesses can be appointed instead of each party having its own.</p> <p>It should be discussed and agreed when and how potential expert witnesses shall present their written material in advance of their testimony.</p>	<p>It is recommended to specify that potential expert reports should contain the following:</p> <ul style="list-style-type: none"> a) the instructions/mandate pursuant to which the expert is providing its opinions or conclusions; b) a statement of the expert's independence from the parties, their legal counsels and the arbitral tribunal; c) a statement of the facts on which the expert is basing its expert opinions and conclusions; and d) the expert opinions and conclusions, including a description of the methods, evidence and information used in arriving at the conclusions.
1.13	Appointment of mediator	<p>It should be discussed whether a mediator shall be appointed by the arbitral tribunal to facilitate a settlement before the main hearing.</p>	<p>If the parties agree to appoint a mediator, the mediator may be appointed by the arbitral tribunal taking into account the nature of the dispute.</p>

Matters to be discussed and agreed during CMC		Best practice	Other recommendations / practical tip
1.14	Possible allocation of time during the case preparation for mediation/settlement discussions	The parties should discuss and agree whether time should be reserved for possible settlement discussions in the preparation schedule.	<p>Generally, the most suitable time for potential settlement discussions is right after the filing of the statement of defence.</p> <p>It is recommended that the arbitrators do not participate as mediators as this will necessitate a change of arbitrators if the mediation is unsuccessful.</p>
1.15	Security for the arbitrators fees and expenses	The arbitrators should be entitled to security for their fee and expenses at all times.	<p>The security should also cover the cost of the rent of venue and all other costs to be incurred by the arbitral tribunal.</p> <p>Security may be arranged by the respective parties issuing a deposit to its legal counsel, followed by the legal counsel's confirmation that the deposit is received and reserved as security for the arbitrators' fees and expenses.</p>

1.16	Potential termination fee to the Tribunal	<p>It should be discussed whether a termination fee to the arbitrators will be applicable if the case is settled or terminated prior to the main hearing based on the following principles:</p> <ul style="list-style-type: none"> - If the hearing is scheduled for one to two days, no cancellation fee should apply. - If the hearing is scheduled for 3 to 8 days, and the hearing is cancelled less than 3 weeks prior to the hearing, a fee equal to 15 % of the arbitrator's normal fee for the time reserved. - If the hearing is scheduled for more than 8 days, and the hearing is cancelled less than 6 months, but more than 3 months prior to the hearing, a cancellation fee equal to 5 % of the arbitrator's normal fee for the time reserved. - If the hearing is scheduled for more than 8 days, and the hearing is cancelled less than 3 months, but more than 3 weeks prior to the hearing, a cancellation fee equal to 10 % of the arbitrator's normal fee for the time reserved. - If the hearing is scheduled for more than 8 days, and the hearing is cancelled less than 3 weeks prior to the hearing, a cancellation fee equal to 15 % of the arbitrator's normal fee for the time reserved 	<p>If the parties should consider a cancellation fee if the case is settled shortly after the commencement of the main hearing, the principles for cancellation fees prior to the main hearing should be taken into account.</p>
------	---	---	--

Matters to be discussed and agreed during CMC		Best practice	Other recommendations / practical tip
PART II – document management			
2.1	Numbering of pleadings	<p>The statement of claim and subsequent pleadings from the Claimant should start with "C" and be consecutively numbered (C-1, C-2 etc.).</p> <p>Statement of defence and subsequent pleadings from the Respondent should start with "R" and be consecutively numbered (R-1, R-2 etc.).</p>	

Matters to be discussed and agreed during CMC		Best practice	Other recommendations / practical tip
2.2	Numbering of exhibits and exhibit-table	<p>Exhibits submitted by the Claimant should be consecutively numbered and start with "C" (C-001, C-002, C-003 etc.).</p> <p>Exhibits submitted by the Respondent should be consecutively numbered and start with "R" and (R-001, R-002, R-003 etc.).</p> <p>Each party should keep an updated table with all the exhibits submitted by it. Such a table should be submitted with each pleading in both pdf and native file.</p>	In larger cases it is recommended that the exhibit-table be produced in Excel, with the following columns: "Exhibit no.", "Date of document" (year-month-date), "Description of document given in the pleading".
2.3	Database	In cases with substantial number of documents, a database should be set up for exchange of all submitted documentation and pleadings.	
2.4	Paper copies	It should be discussed and agreed whether paper copies of the pleadings and exhibits should be circulated in addition to electronically available version.	

Matters to be discussed and agreed during CMC		Best practice	Other recommendations / practical tip
2.5	Factual abstract and deadline for circulation	<p>A factual abstract shall always be produced unless the number of exhibits is limited.</p> <p>Unless otherwise agreed, the Claimant is responsible for production of the factual abstract.</p> <p>A deadline for the circulation of the factual abstract should be agreed.</p> <p>If parts of the factual abstract are not organized chronologically, a chronological list of all the documents submitted should be made.</p>	<p>In cases lasting more than 5 days, it is recommended that the factual abstract is produced at least one month in advance of the start of the main hearing, and that potential new documentation submitted after the production date is taken into an additional factual abstract to be produced and circulated as soon as possible.</p>
2.6	Legal abstract	<p>The production of legal abstracts should be discussed.</p>	<p>The arbitral tribunal should encourage the parties to prepare a joint legal abstract, and set deadlines for circulation of lists of sources of law in advance of the main hearing. In cases involving complicated legal questions, the arbitral tribunal may order the parties to produce legal abstracts.</p>

Matters to be discussed and agreed during CMC		Best practice	Other recommendations / practical tip
2.7	Assisting documents	Assisting documents may be produced and used at any stage of the proceedings to ease the understanding of facts and sources of law already submitted. It should be discussed and agreed that assisting documents used during the main hearing are submitted to the opponent's counsel at the latest before the start of the main hearing on the day the document is intended used.	It is good practice that there are clear references in the assisting documents to the exhibit(s) from which the information in the assisting document is taken.
PART III – the Award			
3.1	Confidentiality of Award	It should be discussed and agreed whether the final Award shall be confidential. If not agreed the background law will apply.	If confidentiality is agreed, it should be discussed whether the parties could accept publication of the Award if it is made anonymous.

THE NOMA RULES ON THE TAKING OF EVIDENCE

Preamble

1. These Rules are mainly based on the IBA Rules on the Taking of Evidence in International Arbitration and are intended to provide an efficient and economical process for the taking of evidence in international arbitrations as an alternative to “discovery”.
2. Parties and Arbitral Tribunals may adopt these Rules, in whole or in part, to govern arbitration proceedings, or they may vary them or use them as guidelines in developing their own procedures. The Rules are not intended to limit the flexibility that is inherent in, and an advantage of, international arbitration.
3. Subject to Article 1 third paragraph, where these Rules are similar to the IBA Rules on the Taking of Evidence in International Arbitration, they should be interpreted similarly.

Definitions

In the NOMA Rules on the Taking of Evidence:

<i>‘Arbitral Tribunal’</i>	means a sole arbitrator or a panel of arbitrators;
<i>‘Claimant’</i>	means the Party or Parties who commenced the arbitration and any Party who, through joinder or otherwise, becomes aligned with such Party or Parties;
<i>‘Evidentiary Hearing’</i>	means any hearing, whether or not held on consecutive days, at which the Arbitral Tribunal, whether in person, by teleconference, videoconference or other method, receives oral or other evidence;
<i>‘Expert Report’</i>	means a written statement by a Party Appointed Expert;
<i>‘General Rules’</i>	means the institutional, ad hoc or other rules that apply to the conduct of the arbitration;
<i>‘NOMA Rules on the Taking of Evidence’</i> or <i>‘Rules’</i>	means these Rules, as they may be revised or amended from time to time;
<i>‘Party’</i>	means a party to the arbitration;
<i>‘Party-Appointed Expert’</i>	means a person or organisation appointed by a Party in order to report on specific issues determined by the Party;
<i>‘Respondent’</i>	means the Party or Parties against whom the Claimant made its claim, and any Party who becomes aligned with such Party or Parties, and includes a Respondent making a counterclaim;

Article 1 Scope of Application and Interpretation

1. Whenever the Parties have agreed or the Arbitral Tribunal has determined to apply the NOMA Rules on the Taking of Evidence, the Rules shall govern the taking of evidence, except to the extent that any specific provision of them may be found to be in conflict with any mandatory provision of law determined to be applicable to the case by the Parties or by the Arbitral Tribunal.
2. Where the Parties have agreed to apply these Rules, they shall be deemed to have agreed, in the absence of a contrary indication, to the version as current on the date of such agreement.
3. In case of conflict between any provisions of these Rules and the General Rules, the Arbitral Tribunal shall apply these Rules in the manner that it determines best in order to accomplish the purposes of both the General Rules and these Rules, unless the Parties agree to the contrary.

Article 2 Consultation on Evidentiary Issues

1. To the extent the case may raise particular issues in respect of taking evidence, the Arbitral Tribunal shall consult the Parties at the earliest appropriate time in the proceedings and invite them to consult each other with a view to agreeing on an efficient, economical, fair and practical process for the taking of evidence.
2. The Arbitral Tribunal is encouraged to identify to the Parties, as soon as it considers it to be appropriate, any issues:
 - a) that the Arbitral Tribunal may regard as relevant to the disputed items and material to their outcome; and/or
 - b) for which a preliminary determination may be appropriate.

Article 3 Documents

1. Within the time ordered by the Arbitral Tribunal, each Party shall submit to the Arbitral Tribunal and to the other Parties all documents available to it on which it relies, including public documents and those in the public domain, except for any documents that have already been submitted by another Party.
2. The Arbitral Tribunal may not order any of the Parties to produce documents (document production), unless the Parties agree to the contrary or, the Arbitral Tribunal decides otherwise (in which case the IBA Rules on the Taking of Evidence shall apply to the document production procedure).
3. A Request to Produce shall contain:
 - a) (i) a description of each requested Document sufficient to identify it, or
 - i. a description in sufficient detail (including subject matter) of a narrow and specific requested category of Documents that are reasonably believed to exist; in the case of Documents maintained in electronic form, the requesting

Party may, or the Arbitral Tribunal may order that it shall be required to, identify specific files, search terms, individuals or other means of searching for such Documents in an efficient and economical manner;

- b) a statement as to how the Documents requested are relevant to the case and material to its outcome; and
 - c) (i) a statement that the Documents requested are not in the possession, custody or control of the requesting Party or a statement of the reasons why it would be unreasonably burdensome for the requesting Party to produce such Documents, and
 - i. a statement of the reasons why the requesting Party assumes the Documents requested are in the possession, custody or control of another Party.
4. Within the time ordered by the Arbitral Tribunal, the Party to whom the Request to Produce is addressed shall produce to the other Parties and, if the Arbitral Tribunal so orders, to it, all the Documents requested in its possession, custody or control as to which it makes no objection.
5. If the Party to whom the Request to Produce is addressed has an objection to some or all of the Documents requested, it shall state the objection in writing to the Arbitral Tribunal and the other Parties within the time ordered by the Arbitral Tribunal. The reasons for such objection shall be any of those set forth in Article 8.2 or a failure to satisfy any of the requirements of Article 3.3.
6. Upon receipt of any such objection, the Arbitral Tribunal may invite the relevant Parties to consult with each other with a view to resolving the objection.
7. Either Party may, within the time ordered by the Arbitral Tribunal, request the Arbitral Tribunal to rule on the objection. The Arbitral Tribunal shall then, in consultation with the Parties and in timely fashion, consider the Request to Produce and the objection. The Arbitral Tribunal may order the Party to whom such Request is addressed to produce any requested Document in its possession, custody or control as to which the Arbitral Tribunal determines that (i) the issues that the requesting Party wishes to prove are relevant to the case and material to its outcome; (ii) none of the reasons for objection set forth in Article 9.2 applies; and (iii) the requirements of Article 3.3 have been satisfied. Any such Document shall be produced to the other Parties and, if the Arbitral Tribunal so orders, to it.
8. In exceptional circumstances, if the propriety of an objection can be determined only by review of the Document, the Arbitral Tribunal may determine that it should not review the Document. In that event, the Arbitral Tribunal may, after consultation with the Parties, appoint an independent and impartial expert, bound to confidentiality, to review any such Document and to report on the objection. To the extent that the objection is upheld by the Arbitral Tribunal, the expert shall not disclose to the Arbitral Tribunal and to the other Parties the contents of the Document reviewed.

9. If a Party wishes to obtain the production of Documents from a person or organisation who is not a Party to the arbitration and from whom the Party cannot obtain the Documents on its own, the Party may, within the time ordered by the Arbitral Tribunal, ask it to take whatever steps are legally available to obtain the requested Documents, or seek leave from the Arbitral Tribunal to take such steps itself. The Party shall submit such request to the Arbitral Tribunal and to the other Parties in writing, and the request shall contain the particulars set forth in Article 3.3, as applicable. The Arbitral Tribunal shall decide on this request and shall take, authorize the requesting Party to take, or order any other Party to take, such steps as the Arbitral Tribunal considers appropriate if, in its discretion, it determines that (i) the Documents would be relevant to the case and material to its outcome, (ii) the requirements of Article 3.3, as applicable, have been satisfied and (iii) none of the reasons for objection set forth in Article 8.2 applies.

Article 4 Witnesses of Fact

1. Within the time ordered by the Arbitral Tribunal, each Party shall identify the witnesses on whose testimony it intends to rely and the subject matter of that testimony.
2. Any person may present evidence as a witness, including a Party or a Party's officer, employee or other representative.
3. It shall not be improper for a Party, its officers, employees, legal advisors or other representatives to interview its witnesses or potential witnesses and to discuss their prospective testimony with them.
4. The Arbitral Tribunal may order each Party to submit to the Arbitral Tribunal and to the other Parties a summary which shall contain (for each witness):
 - a) the full name and address of the witness, a statement regarding his or her present and past relationship (if any) with any of the Parties, and a description of his or her background, qualifications, training and experience, if such a description may be relevant to the dispute or to the contents of the statement; and
 - b) the subject matter of the testimony.
5. Written witness statements will not be used unless the Parties agree to the contrary.

Article 5 Party-Appointed Experts

1. A Party may rely on a Party-Appointed Expert as a means of evidence on specific issues. Within the time ordered by the Arbitral Tribunal, (i) each Party shall identify any Party Appointed Expert on whose testimony it intends to rely and the subject-matter of such testimony and (ii) the Party-Appointed Expert shall submit an Expert Report.
2. The Expert Report shall contain:

- a) the full name and address of the Party Appointed Expert, a statement regarding his or her present and past relationship (if any) with any of the Parties, their legal advisors and the Arbitral Tribunal, and a description of his or her background, qualifications, training and experience;
 - b) a description of the instructions pursuant to which he or she is providing his or her opinions and conclusions;
 - c) a statement of his or her independence from the Parties, their legal advisors and the Arbitral Tribunal;
 - d) a statement of the facts on which he or she is basing his or her expert opinions and conclusions;
 - e) his or her expert opinions and conclusions, including a description of the methods, evidence and information used in arriving at the conclusions. Documents on which the Party-Appointed Expert relies that have not already been submitted shall be provided;
 - f) if the Expert Report has been translated, a statement as to the language in which it was originally prepared, and the language in which the Party-Appointed Expert anticipates giving testimony at the Evidentiary Hearing;
 - g) an affirmation of his or her genuine belief in the opinions expressed in the Expert Report;
 - h) the signature of the Party-Appointed Expert and its date and place; and
 - i) if the Expert Report has been signed by more than one person, an attribution of the entirety or specific parts of the Expert Report to each author.
3. If a Party-Appointed Expert whose appearance has been requested fails without a valid reason to appear for testimony at an Evidentiary Hearing, the Arbitral Tribunal may disregard, in whole or in part in accordance with Article 8, any Expert Report by that Party-Appointed Expert related to that Evidentiary Hearing, depending on the Party-Appointed Expert's reasons for not appearing.

Article 6 Inspection

1. The Arbitral Tribunal may, at the request of a Party inspect or require the inspection by a Party-Appointed Expert of any site, property, machinery or any other goods, samples, systems, processes or documents, as it deems appropriate. The Arbitral Tribunal shall, in consultation with the Parties, determine the timing and arrangement for the inspection. The Parties and their representatives shall have the right to attend any such inspection.

Article 7 Evidentiary Hearing

1. Each witness (which term includes, for the purposes of this Article, witnesses of fact and any experts) shall, subject to Article 8.2, appear for testimony at the Evidentiary

Hearing. Each witness shall appear in person unless the Arbitral Tribunal allows the use of videoconference or similar technology with respect to a particular witness.

2. The Arbitral Tribunal shall at all times have complete control over the Evidentiary Hearing. The Arbitral Tribunal may limit or exclude any question to, answer by or appearance of a witness, if it considers such question, answer or appearance to be irrelevant, immaterial, unreasonably burdensome, duplicative or otherwise covered by a reason for objection set forth in Article 8.2. Questions to a witness during direct and re-direct testimony may not be unreasonably leading.
3. With respect to oral testimony at an Evidentiary Hearing:
 - a) the Claimant shall ordinarily first present the testimony of its witnesses, followed by the Respondent presenting the testimony of its witnesses;
 - b) following direct testimony, any other Party may question such witness, in an order to be determined by the Arbitral Tribunal. The Party who initially presented the witness shall subsequently have the opportunity to ask additional questions on the matters raised in the other Parties' questioning;
 - c) thereafter, the Claimant shall ordinarily first present the testimony of its Party-Appointed Experts, followed by the Respondent presenting the testimony of its Party-Appointed Experts. The Party who initially presented the Party-Appointed Expert shall subsequently have the opportunity to ask additional questions on the matters raised in the other Parties' questioning;
 - d) if the arbitration is organised into separate issues or phases (such as jurisdiction, preliminary determinations, liability and damages), the Parties may agree or the Arbitral Tribunal may order the scheduling of testimony separately for each issue or phase; and
 - e) the Arbitral Tribunal may ask questions to a witness at any time.
4. A witness of fact providing testimony shall first affirm, in a manner determined appropriate by the Arbitral Tribunal, that he or she commits to tell the truth or, in the case of an expert witness, his or her genuine belief in the opinions to be expressed at the Evidentiary Hearing. If the witness has submitted an Expert Report, the witness shall confirm it. The Parties may agree or the Arbitral Tribunal may order that the Expert Report shall serve as that witness's direct testimony.

Article 8 Admissibility and Assessment of Evidence

1. The Arbitral Tribunal shall determine the admissibility, relevance, materiality and weight of evidence.
2. The Arbitral Tribunal shall, at the request of a Party or on its own motion, exclude from evidence or production any Document, statement, oral testimony or inspection for any of the following reasons:
 - a) lack of sufficient relevance to the case or materiality to its outcome;

- b) legal impediment or privilege under the legal or ethical rules determined by the Arbitral Tribunal to be applicable;
 - c) unreasonable burden to produce the requested evidence;
 - d) loss or destruction of the Document that has been shown with reasonable likelihood to have occurred;
 - e) grounds of commercial or technical confidentiality that the Arbitral Tribunal determines to be compelling;
 - f) grounds of special political or institutional sensitivity (including evidence that has been classified as secret by a government or a public international institution) that the Arbitral Tribunal determines to be compelling; or
 - g) considerations of procedural economy, proportionality, fairness or equality of the Parties that the Arbitral Tribunal determines to be compelling.
3. In considering issues of legal impediment or privilege under Article 9.2(b), and insofar as permitted by any mandatory legal or ethical rules that are determined by it to be applicable, the Arbitral Tribunal may take into account:
- a) any need to protect the confidentiality of a Document created or statement or oral communication made in connection with and for the purpose of providing or obtaining legal advice;
 - b) any need to protect the confidentiality of a Document created or statement or oral communication made in connection with and for the purpose of settlement negotiations;
 - c) the expectations of the Parties and their advisors at the time the legal impediment or privilege is said to have arisen;
 - d) any possible waiver of any applicable legal impediment or privilege by virtue of consent, earlier disclosure, affirmative use of the Document, statement, oral communication or advice contained therein, or otherwise; and
 - e) the need to maintain fairness and equality as between the Parties, particularly if they are subject to different legal or ethical rules.
4. The Arbitral Tribunal may, where appropriate, make necessary arrangements to permit evidence to be presented or considered subject to suitable confidentiality protection.
5. If the Arbitral Tribunal determines that a Party has failed to conduct itself in good faith in the taking of evidence, the Arbitral Tribunal may, in addition to any other measures available under these Rules, take such failure into account in its assignment of the costs of the arbitration, including costs arising out of or in connection with the taking of evidence.
6. If a Party fails without satisfactory explanation to make available any other relevant evidence, including testimony, sought by one Party to which the Party to whom the request was addressed has not objected in due time or fails to make available any

evidence, including testimony, ordered by the Arbitral Tribunal to be produced, the Arbitral Tribunal may infer that such evidence would be adverse to the interests of that Party.

7. If the Arbitral Tribunal determines that a Party has failed to conduct itself in good faith in the taking of evidence, the Arbitral Tribunal may, in addition to any other measures available under these Rules, take such failure into account in its assignment of the costs of the arbitration, including costs arising out of or in connection with the taking of evidence.