

Strengthening the Arbitration System

of

*Bangladesh Association of International Recruitment
Agencies (BAIRA)*

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Supported By PROKAS, British Council



Executive Summary

RMMRU is not only a pioneer organization in the migration area rather it considered a policy and strategy maven due to its effort to formalize and institutionalize the migration governance. Along a similar vein, the purpose of this study is to recommend an appropriate dispute resolution mechanism for BAIRA (Bangladesh Association for International recruiting Agencies), the sole association of all the registered international recruiting agencies in Bangladesh, to resolve migration related , particularly, dispute related to breach of migration employment contract and migration fraud. It is expected that this dispute resolution mechanism will be able to fill the existing void for a specific sector wise dispute resolution mechanism focusing only the resolution of migration workers and employment related dispute (migration related dispute”) and will provide a platform for amicable settlement of migration related disputes.

1. Necessity of BAIRA Arbitration Rules

The necessity of a sector specific dispute resolution mechanism for the effective settlement of migration related disputes are manifold: firstly, a migration related dispute stems out from a relationship and/or an agreement which itself is different than a regular employer-employee relation¹, secondly existing power asymmetry between the migrant worker and their recruiters and employers, thirdly, difficulties in access to justice due to the age old colonial structures of the regular justice delivery system, fourthly, a huge back log of cases in the formal justice delivery system make timely remedy a pie in the sky and finally, even if the victim may

¹ The migration related disputes stem out from an employment contract which took place between a Bangladeshi worker and an international employer and the worker in most cases is hired or recruited by a recruiting agency. The authorized recruiters or agents of the international employers very often use unauthorized field level recruiter or popularly known as Dalal to recruit workers skilled and interested to migrate for work. Therefore, under the penumbras of migrant employment contract a number of other agreements and transactions may take place.

succeed on getting a judgment but the possibilities of that judgment getting enforced in such an asymmetric situation is very little to none. Therefore, a sector specific dispute resolution mechanism capable of resolving disputes related to migrant workers of Bangladesh is a dire necessity.

The idea of a sector specific dispute resolution mechanism to resolve the disputes related to migration employment is not novel as some dispute resolution mechanisms are already existing in this sector, for instances Overseas Employment and Immigrant Act 2013² has a provision to resolve specific migration related disputes through ADR, BAIRA has an internal 'dispute resolution mechanism' to resolve the disputes of its members but none of these are accessible by the poor migrant workers who perhaps could be mostly benefitted from such dispute resolution mechanism. Though RMMRU and BMET both offers standalone dispute resolution mechanism- RMMRU has a mediation procedure under its Mediation Committee which tries to mediate the grassroot migration related fraud and BMET provides an Arbitration- Mediation- Arbitration mechanism to settle migration related fraud and other disputes- but this standalone mechanisms or resolution procedures are not enough to address properly and an exhaustive specialized set of rules has become a *sine qua non* to ensure the effective resolution of a disputes related migrant workers. Hence, the philosophical underpinning of this report is to find out an inclusive dispute resolution mechanism under the institutional framework of BAIRA that will ensure easy access to justice to everyone related to a migration related dispute.

In doing so, this research provides recommendation to transform the exiting standalone dispute resolution practices of BAIRA to an inclusive one which will link the

² The Overseas Employment and Immigration Act 2013 provide little to no guideline for conducting and/or administering a dispute resolution proceeding or more specifically an arbitration proceeding.

BAIRA dispute resolution mechanism with other available dispute resolution mechanisms and will connect the grass roots, for example, community conducted dispute resolution mechanism with the formal judiciary. This top down holistic approach of the proposed dispute resolution mechanism will not only reduce forum shopping and redundancy but also will ensure transparency and accountability in migrant workers recruitment practices. Finally, and most importantly, this set of Arbitration Rules will provide a specific guideline to administer arbitration and mediation which is so far unfounded in the existing legal frameworks.

2. Legal mandate &Necessity of having a Separate Rules of Arbitration:

i. Under Arbitration Act 2001

The Arbitration Act, 2001 is a talisman for any arbitration, whether conducted on ad hoc basis or administered by any institution, taking place in Bangladesh and provides the legal framework to resolve any dispute outside the purview subject to the consent of the parties. This legislation provides general guideline for arbitral proceedings like FAA, 1925 (Federal Act of Arbitration of the United States)or English Arbitration Act, 1996, however, it does not provide any specific guideline for sector specific arbitration rather it allows individual institutions to draft and implement its own arbitration rules based on its focus and necessity, for instance Bangladesh International Arbitration Center (“BIAC”) administers international arbitration and domestic arbitration under its own arbitration rules. According the Arbitration Act of 2001, “[a]rbitration means any arbitration whether or not administered by permanent

institution”³ and rules of such administering institutions are valid if they are not in direct conflict with the provisions of the Arbitration Act.⁴

Therefore, resorting arbitration and administering arbitration pursuant to a sector specific arbitration rules has been legitimized under the Arbitration Act 2001.

However, availing of alternative dispute resolution mechanism at the first instance bypassing the jurisdiction of the Court is an exercise of the parties autonomous will power which is enumerated in the “dispute resolution agreement” appeared either as a dispute resolution clause within the contract from which dispute stems out or as a separate agreement.⁵ According to the provisions of Arbitration Act 2001, an arbitration agreement works as a legal mandate for Arbitration and the Act defines an arbitration agreement as “*an agreement by the parties to submit to Arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not*”⁶.

The Arbitration Act 2001 also provides details explanation regarding the form of arbitration agreement and as per the explanation an agreement has to be “*in writing and shall be deemed to be in writing if it is contained in (a) a document signed by parties, or (b) an exchange of letters, telex, telegrams, Fax, e-mail or other means of telecommunication which provide a record of the agreement; or (c) an exchange of statement of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other*”⁷. There is no

³ The Arbitration Act 2001, Sec 2(m).

⁴*Id*, Sec 3(4): “[w]here any arbitration agreement is entered into before or after the commencement of this Act, the provisions thereof shall apply to the arbitration proceedings in Bangladesh relating to the dispute arising out of that agreement.”

⁵*Id*, Sec 9(1): Form of arbitration agreement.

⁶ The Arbitration Act 2001, Sec 2(n).

⁷*Id*, Sec 9(2). “Explanation: The reference in a contract is a document containing an arbitration clause constitutes an arbitration agreement If the contract is in writing and the reference is such as to make that arbitration clause part of the contract.”

limitation period applicable to the execution for this agreement meaning parties can execute such agreement in exercise of their will power even after the arising of disputes. Therefore, a clause included within the employment agreement between the migrant worker and the recruiting agencies representing foreign employers mentioning arbitration as the preferred dispute resolution mechanism under the BAIRA Arbitration Rules will be enough to earn the legal mandate under Arbitration Act 2001 and invoke the jurisdiction of the BAIRA Arbitral Tribunal.

ii. Under the Code of Civil Procedure 1908

The Code of Civil Procedure (“CPC”) 1908 is a century-old legislation that guides the procedures of civil courts in Bangladesh. However, to ensure quick resolution of a massive pile of cases in civil courts, provisions of ADR have been inserted through the amendment of section 89 of CPC. While section 89A and 89B discuss the provisions of Alternative Dispute Resolution (“ADR”) at the pre-trial stage, section 89C discusses the process of conducting ADR during the appeal. This amendment of CPC broadened the application of ADR mechanisms which includes arbitration and reaffirmed the legal mandate of outside court dispute resolution mechanism.

Since section 89B (1) of the CPC provides the mandate of Arbitration Act 2001 in resolving disputes through arbitration under the CPC, the definition of ‘arbitration’ given in the Arbitration Act 2001 also applies to CPC. Thus, under the CPC, arbitration can be conducted by any individual lawyer or any other person or agency appointed by the parties to conduct arbitration following the Arbitration Act 2001 and which ensures the legal mandate of resolution of disputes outside the court subject to the consent of the parties. Therefore, resolution of migration related disputes pursuant to BAIRA Arbitration Rules is valid and allowed within the general legal framework of Bangladesh.

iii. Under Overseas Employment and Migration Act 2013

It is evident that in absence of express prohibition any dispute can be arbitrated with the consent of the parties related to the dispute. To resolve disputes related to overseas employment and migration outside of the court, more specifically through arbitration, it is required that the legislation governing overseas employment and migration does not prohibit the resolution of disputes related to such employment.

An inspection of the Overseas Employment and Migration Act 2013 shows it does not prohibit arbitration as a dispute resolution mechanism rather it provides mechanism to settle dispute through arbitration (“salish”⁸). The section 41(3) states, “...the Government or the authorities or the person authorized by it may, by an order, dispose of the complaint directly or through arbitration (salish) within three months from the date of completion of the investigation.” Though here authorization is required but in existence of an arbitration clause or agreement to resolve disputes such authorization will not be required. Therefore, the resolution of disputes through arbitration under the BAIRA Arbitration Rules also not barred by the governing legislation for overseas employment and migrant workers.

3. Salient features of BAIRA Arbitration Rules:

The BAIRA Arbitration Rules 2019 is drafted in the light of Arbitration Act 2001, HKIAC Administered Arbitration Rules 2018, ICC Arbitration Rules 2010, SIAC Arbitration Rules 2016 and UNCITRAL Arbitration Rules 2010 and following are the salient features of the Rules that underpin the objective of drafting these rules.

i. Limiting applicability only to the Bangladeshi natural or legal persons unless otherwise agreed by the parties.

Explanation:

⁸ Salish is the Bengali translation of the word arbitration.

National Party : Migrant Workers, Recruiting Agencies & Agents of the Recruiting Agencies.

International Party : International Employers

Comment : The Arbitration Act 2001 provides different scheme for an arbitration where an international party is involved, and it requires the involvement of the hon'ble judge of the High Court Division. Whether the stakeholders of this research work want the involvement of an international party that it depends on the capacity and resources of the involved stakeholders in this procedure.

ii. Nature or parties of the Disputes:

A dispute related to overseas employment and migration known as commonly known as migration related dispute may fall one of the following categories:

- (i) immigrant worker vs recruiting agent
- (ii) immigrant worker vs middleman (*Dalal*)
- (iii) recruiting agent vs recruiting agent
- (iv) immigrant workers vs foreign employers
- (v) recruiting agent vs foreign employers
- (vi) recruiting agencies vs Dalal

Though all the categories can be resolved through arbitration but for that explicit consent of the parties shall be required. Based on the standard practice in this field an agreement executed by the foreign employer consenting to a disputed resolution mechanism taken place in Bangladesh is not common. Moreover,

participation of a foreign employer will change the nature of the arbitration from domestic to international for which separate procedures shall be followed. Considering the limitation of resources and complexities the BAIRA Arbitration Rules has been given jurisdiction over only Bangladeshi nationals and citizens and entities.

iii. Fair and Impartiality

This is the underpinning theme of this set of rules. Any decision of the Arbitral Tribunal which does not fall directly within the frameworks of this Arbitration Rule will be taken fairly and impartially.

To maintain impartiality a party inclusive model has been suggested. Following is a probable outline of such model.

As BAIRA already has a Standing Committee on Dispute Resolution, the Arbitrator(s) from recruiting agents can be chosen from this panel. On the other hand, migrant workers may appoint their arbitrators. In case, defrauded migrant workers are referred by RMMRU; parties may choose to arbitrators from RMMRU *salish* committee members or any other person according to their choice.

iv. Expeditious and cost effective

This is one of the most advertised features of arbitration which crafts the spirit of the BAIRA Arbitration Rules. Independence of the Arbitral Tribunal in applying and bypassing procedural laws of the country to make the process cost and time effective is endeavored to ensure in the BAIRA Arbitration Rules. To allow the

parties to follow a fast track procedure optional provisions related to emergency arbitrator and express arbitration have been incorporated in the rules.

Explanation:

As it is mentioned that cost effective and expeditious were two selling points of arbitration that made a preferable choice of dispute resolution, however, failure to maintain these two flagship qualities disgruntled the users of arbitration and provided reasonable grounds to question the justification of adopting arbitration as the preferred mode of dispute resolution. In order to address the situation, the stakeholders invented some schemes that will help the parties to adopt a dispute resolution mechanism according to their priority and emergency arbitrator and express arbitration procedure are among these solutions. The Arbitration Act 2001 is silent about these provisions and thus these are incorporated as optional provisions in the BAIRA Arbitration Rules meaning it can be applied to an arbitration proceeding if both the party agrees.

v. Good faith and *Ex aequo et bono*

The arbitral tribunal shall have the power to decide *ex aequo et bono* unless the parties agree otherwise as long the decision is based on good faith. The power to decide *ex aequo et bono* or deciding the dispute as an *arbitrator compositeur* allows the tribunal more flexibility than a court.

Explanation:

One of the misnomers prevailing about the arbitration and arbitral tribunal exists in Bangladesh is that Arbitral Tribunals can declare an equitable award to pursue and spirit of amicable solution. However, in absence of a recognized authority

exercising such power by an arbitral tribunal may cause a challenge and thus it is required to be agreed by the parties. The Arbitration Act 2001 remains silent about this authority of the arbitral tribunal to decide a dispute *ex aequo et bono*, albeit this doctrine balances the power asymmetry of the parties by allowing the Arbitral Tribunal to go beyond the four corners of the prescribed legal framework. Hence, vesting the Arbitral Tribunal with such authority in this set of rules which will be applied in disputes where stark power asymmetry exists will be significant to protect the interest of the weaker parties.

vi. Flexibility in conducting or administering arbitration proceedings

To make the arbitration or dispute resolution more accessible and less formal, flexibility has been given to the Arbitral Tribunal in conducting the procedures which allows curbing the relevant procedural laws and taking aid of the modern technologies.

vii. Application of Arb-Med or Arb-mid-Arb Mix Model

Following the Arbitration Act 2001 the current BAIIRA Arbitration Rules also provide a mix model of Arbitration and Mediation. Under the penumbra of this model parties can negotiate to settle their disputes even before resorting to the arbitration and can try to mediate the matter before an ap suspending the arbitration pointed mediator under the Arbitration Rules even after resorting to arbitration. This model is also known as Med-Arb Model, a dispute resolution model where mediation is followed by arbitration or Arb-Med-Arb, arbitration followed by mediation and then arbitration again if required. However, to avoid procrastination and to make the procedure more

efficient establishment of a mediators' panel is recommended, for instance, experiences of Mediation Migration Committee (MMC) can be instrumental here.

viii. Appointment of women neutral/ arbitrator in a dispute involved woman migrant worker

Almost half of the victim migrant workers are women and their demands for justice are in many cases remain unheard in the male dominated centuryold colonial justice delivery system. Presence of a woman at the bench empowers and enables those victim migrant women workers to unwind their story of discrimination and exploitation. Thus, it is suggested to appoint a woman as the arbitrator in an arbitration conducted before a sole arbitrator and as the third arbitrator in arbitration conducted before panel of three arbitrators.

ix. Establishment of an administering authority to conduct arbitration under BAIRA Arbitration Rules

A neutral administering body is a sine qua non for efficient and fair administration of arbitration proceedings. This administering body can be established in the representation of BMET (Bureau of Manpower Employment and Training), IOM, MEWOE (Ministry of Expatriates' Welfare and Overseas Employment), RMMRU (Refugee and Migratory Movement Research Unit) and BAIRA (Bangladesh Association of International Recruitment Agencies).

A committee will be appointed every year from the members of the of the administering institutions and this will be known as 'Dispute Resolution Committee'.

x. Model Clause:

To avoid unwanted challenges regarding the jurisdiction of the arbitral tribunal under the BAIRA Arbitration Rules a model clause is preferred. A sample model clause is added under Appendix I of this Rule.

xi. Providing specific guidelines for making of an Award

To ensure the finality of an arbitral award and to avoid unnecessary hassles stemmed from an award a specific guideline is tried to provide in the Draft Arbitration Rules for making an award.

**BAIRA ARBITRATION RULES FOR OVERSEAS EMPLOYMENT AND
MIGRANT WORKERS RELATED DISPUTE**

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BAIRA ARBITRATION RULES

ARTICLE 1: Short Title and Scope of Application

1. These Rules may be called the BAIRA Arbitration Rules (the “Rules”). It extends to the whole of Bangladesh and will be applicable to migration related disputes involving any natural or legal persons of Bangladesh.
2. The Rules provide for the settlement of migration worker or migration related dispute between migrant workers and the parties involved in the recruiting and employing migrant workers, between recruiting agencies and between any parties involved with the employment of the migrant workers by arbitration and mediation held in Bangladesh,, having an agreement to settle dispute through arbitration.
3. Where the parties have agreed to resolve their disputes through arbitration under the BAIRA Arbitration Rules, it shall be deemed that they prefer arbitral tribunal over court. However, a failed attempt to resolve disputes through arbitration does not preclude the parties resorting to the court.
4. Disputes arising out of or related to any migration employment contract, where no other Arbitration Rule is mentioned as preferred rules, and which has not been referred to any other arbitral tribunal, before January 30, 2020 (the date of coming into force of the BAIRA Arbitration Rules) can also be referred to arbitration proceedings administered under BAIRA Arbitration Rules with the consent of all the parties.
5. In cases of a conflict between the provisions of Arbitration Act 2001 and BAIRA Arbitration Rules, the Arbitration Act 2001 shall prevail. In interpreting any concept, term or procedure and provision of the BAIRA Arbitration Rules, the Arbitration Act

2001 and other relevant laws shall be taken into consideration. In absence of any clear and specific guidelines in the national legislations, relevant international best practices and legislations shall be considered. In interpreting any provision, the basic features of arbitration, for instance easily accessible, cost effective, expeditious, less formal shall be taken into consideration.

6. The Rules shall not affect any other law for the time being in force by which certain disputes may not be submitted to arbitration.

Article 2: Definitions

In these rules, unless there is anything repugnant in the subject or context, -

- (i) “arbitration” means any arbitration whether or not administered by the permanent institution;
- (ii) “arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen, or which may arise between them;
- (iii) “arbitration tribunal” includes one or more arbitrators;
- (iv) “award” includes, *inter alia*, an interim, partial or final award;
- (v) “court” means District Judge’s Court and includes Additional Judge’s Court, and any other court or any competent authority as specified in the law, other than the High Court Division or Appellate Division of the Supreme Court;
- (vi) “District Judge” means that District Judge within whose local jurisdiction the concerned arbitration agreement has been entered into;
- (vii) ‘employment agreement’ implicates an agreement concluded for overseas migration of migrant workers defined in Section 2(3) of Foreign Employment and Migrant Laws, 2013;

- (viii) “legal representative” means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased, and, where a party acts in a representative character, the person on whom the estate devolves on the death of the party so acting;
- (ix) “migrant worker” or “worker” means any citizen of Bangladesh who, for wages,—
- (a) is in the planning process to migrate for work or is departing to any foreign country for work;
 - (b) is employed in a trade or profession in any foreign country; or
 - (c) has returned to Bangladesh at the end of the tenure of employment or without having completed the tenure of employment in a trade or profession from a foreign country;⁹
- (x) “migration workers related dispute or migration related dispute” includes migration fraudulence or irregularity, breach of employment contract, breach of any rights that is guaranteed to a migrant worker under existing laws of Bangladesh whether contractual or not;
- (xi) “party” or “parties” include claimants, respondents or additional parties;
- (xii) “person” or “persons” refer to individuals, organisations, company and association and includes a partnership firm.

Article 3: Dispute Resolution Board

1. The Dispute Resolution Board for Migration Related Dispute (the “Board”) is an independent neutral body established to ensure an efficient and impartial administration of the arbitral tribunals constituted under the BAIRA Arbitration Rules. The Statues of the Board are set forth in Appendix I.

⁹ Explained in 2(3) of the Foreign Employment and Migration Act (FEMA) 2013

2. The Board does not itself resolve disputes. It administers the resolution of disputes by arbitral tribunals, in accordance with the BAIRA Arbitration Rules. The Board is the only body authorized to administer arbitrations under the Rules, including the scrutiny and approval of awards rendered in accordance with the Rules. It draws up its own internal rules, which are set forth in Appendix II (the “Internal Rules”).
3. The Chairman of the Board (the “Chairman”) or, in the Chairman’s absence or otherwise at the Chairman’s request, one of its Vice-Chairmen shall have the power to take urgent decisions on behalf of the Board, provided that any such decision is reported to the Board at its next session.
4. As provided for in the Internal Rules, the Board may delegate to one or more Expert Committees composed of its members or members from outside the Board the power to take certain decisions, provided that any such decision may require to be referred to the Board for approval..
5. The Board to assist its work and the work of the arbitral tribunal shall establish a Secretariat that will work as a bridge among the Board, the Expert Committee(s) and the Arbitral Tribunal. A neutral member of the Board shall be appointed as Secretary General and one representative of BAIRA and one representative from RMMRU shall be appointed as Deputy Secretary Generals. The Secretary General with the approval of the Board shall appoint employees depending on the workload.
6. The Board to assist its work and the work of the arbitral tribunal and the Secretariat shall establish one or more Expert Committee(s), depending on the workload. Each Expert Committee shall be consisted of three members. Members of the expert committees are expected to be equipped with the good understanding of the dispute resolution, more

specifically arbitration. In cases where members of the Expert Committee have dissenting opinions the majority opinion shall prevail and in such a situation the matter shall refer to the Board for final decision.

Article 4: Written Notifications or Communications

1. All pleadings and other written communications submitted by any party, as well as all documents annexed thereto, shall be supplied in a number of copies sufficient to provide one copy for each party, plus one for each arbitrator, and one for the Secretariat. A copy of any notification or communication from the arbitral tribunal to the parties shall be sent to the Secretariat.
2. Unless otherwise agreed by the parties-
 - (a) all written communications, notices or summons shall be made to the last address of the party or its legal representative for whom the same are intended, as notified either by the party in question or by the other party. Such notifications or communications may be made by delivery against receipt, registered post, courier, email, or any other means of telecommunication that provides a record of the sending thereof;
 - (b) any written communication, notice or summon is deemed to have been received if it is delivered to the addressee personally or through agents or through registered post at his place of business, habitual residence or mailing address;
 - (c) if none of the places referred to in clause (b) can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or

mailing address by registered letter or by any other means including those mentioned in (c), (d) and (e), which provides a record of the attempt to deliver it;

(d) in the absence of (b) and (c), communicated to any facsimile number and email address which the addressee holds out to the world at the time of such communication; or

(e) in the absence of (b), (c) and (d), communicated to any last known address, facsimile number and email address of the addressee; or

(f) uploaded to any secured online repository that the parties have agreed to use.

3. Any communication, notice or summon, as the case may be, shall be deemed to have been received on the day it was received by the party itself or by its representative, or would have been received if made in accordance with Article 4(2).
4. Periods of time specified in or fixed under the Rules shall start to run on the day following the date a notification or communication is deemed to have been made in accordance with Article 4(3). When the day next following such date is an official holiday, the period of time shall commence on the first following business day. Official holidays and non-business days are included in the calculation of the period of time. If the last day of the relevant period of time granted is an official holiday or a nonbusiness day, the period of time shall expire at the end of the first following business day.
5. This section does not apply to written communication, notice or summons, as the case may be, in respect of proceedings of any judicial authority.

Article 5: Effect of the Arbitration Agreement & Arbitrability of the Dispute

1. Where the parties have agreed to submit to arbitration under the Rules, they shall be deemed to have submitted *ipso facto* to the Rules in effect on the date of commencement

of the arbitration, unless they have agreed to submit to the Rules in effect on the date of their arbitration agreement.

2. By agreeing to arbitration under the Rules, the parties have accepted that the arbitration shall be administered by the Board under the Rules.
3. If any party against which a claim has been made does not submit an Answer, or if any party raises one or more pleas concerning the existence, validity or scope of the arbitration agreement or concerning whether all of the claims made in the arbitration may be determined together in a single arbitration, the arbitration shall proceed and any question of jurisdiction or of whether the claims may be determined together in that arbitration shall be decided directly by the arbitral tribunal, unless any party appeals to the Secretary General regarding the decision of the arbitral tribunal. The Secretary General shall then refer the matter to the Expert Committee for its decision pursuant to Article 5(4) and shall render the opinion of the Committee along with the appeal application to the Board. The Board's decision in the matter shall be considered final.
4. In all cases referred to the Expert Committee pursuant to Article 5(3), the Committee shall give its opinion whether and to what extent the arbitration shall proceed.
5. In cases described in Article 5(3), consolidation of arbitration is only possible if the arbitral tribunal or the Committee *prima facie* satisfied that an arbitration agreement under the Rules may exist. In particular:
 - (a) where there are more than two parties to the arbitration, the arbitration shall proceed between those of the parties, including any additional parties joined pursuant to Article 14, with respect to which the Committee is *prima facie*

satisfied that an arbitration agreement under the Rules that binds all the parties may exist; and

- (b) where claims pursuant to Article 16 are made under more than one arbitration agreement, the arbitration shall proceed as to those claims with respect to which the Committee is prima facie satisfied
- (i) that the arbitration agreements under which those claims are made may be compatible and
 - (ii) that all parties to the arbitration may have agreed that those claims can be determined together in a single arbitration.
- 6.** The Board's decision pursuant to Article 5(3) is without prejudice to the admissibility or merits of any party's plea or pleas.
- 7.** Any decision as to the jurisdiction of the arbitral tribunal, except as to parties or claims with respect to which the Board decides that the arbitration cannot proceed, shall be taken by the arbitral tribunal itself.
- 8.** Where the parties are notified of the arbitral tribunal's decision and in case of appeal the Board's confirmation that the arbitration cannot proceed in respect of some or all of them, any party retains the right to go to the court of District Judge to determine whether or not, and in respect of which of them, there is a binding arbitration agreement.
- 9.** Where the arbitral tribunal or the Board has decided that the arbitration cannot proceed in respect of any of the claims, such decision shall not prevent a party from reintroducing the same claim at a later date in other proceedings.
- 10.** (a) Where any party or any person claiming under any party to the arbitration agreement commences any court proceedings against any other party or any person claiming under

any other party to the agreement, the other party or the person claiming under the other party to such legal proceedings may, at any time before filing a written statement, apply to the litigating Court before which the proceedings are pending to refer the matter to the Secretariat to resolve the matter through the prescribed methods of the BAIRA Arbitration Rules.

(b) The Court, if satisfied that an arbitration agreement exists between the parties, shall refer the matter to the Secretariat for arbitration under the BAIRA Arbitration Rules staying the proceedings, unless the Court finds that the arbitration agreement is void, inoperative or the matter is incapable of determination by arbitration.

11. (a) If any of the parties refuses or fails to take part in the arbitration or any stage thereof the arbitration shall proceed notwithstanding such refusal or failure.

(b) If a challenge is made under the Rule 9.1 and that the issue is pending before the judicial authority, proceedings in an arbitral tribunal established under BAIRA Arbitration Rules may be commenced or continued, and an arbitral award can be made.

12. Unless otherwise agreed, the arbitral tribunal shall not cease to have jurisdiction by reason of any allegation that the contract is non-existent or null and void, provided that the arbitral tribunal upholds the validity of the arbitration agreement. The arbitral tribunal shall continue to have jurisdiction to determine the parties' respective rights and to decide their claims and pleas even though the contract itself may be non-existent or null and void.

ARTICLE 6: Constitution of the Arbitral Tribunal

Number of Arbitrators

1. The disputes shall be decided by a sole arbitrator or by three arbitrators. However, the tribunal can never be consisted of even number of arbitrators.
2. Where the parties have not agreed upon the number of arbitrators, the Board shall appoint a sole arbitrator nominated by the parties from a list of arbitrators provided by the Secretariat in a matter where the amount of the claim is up to BDT. 5, 00,000.00 (Five Lacs Taka Only). Where the amount of claim exceeds BDT. 5,00,000.00 (Five Lacs Taka), the claimant shall nominate an arbitrator within a period of fifteen (15) days from the receipt of the notification of the decision of the Board, and the respondent shall nominate an arbitrator within a period of fifteen (15) days from the receipt of the notification made by the claimant. If a party fails to nominate an arbitrator, the appointment shall be made by the Board with the assistance of the Secretariat.

Sole Arbitrator:

3. Where the parties have agreed that dispute shall be resolved by a sole arbitrator that may, by agreement, nominate the sole arbitrator for confirmation. If the party fails to nominate a sole arbitrator within thirty (30) days from the date when the claimant's Request for Arbitration has been received by the other party, or within such additional times as may be allowed by the Secretariat, the sole arbitrator shall be appointed by the Board from the list if arbitrators provided by the Secretariat.

Three Arbitrators:

4. Where the parties have agreed or in absence of an agreement where the claim in the dispute exceeds BDT. 5,00,000.00, then subject to the provisions of the Rules the dispute

shall be resolved by three arbitrators, each party will nominate in the Request and the Answer, respectively, one arbitrator for confirmation and the appointed party arbitrators will select the third arbitrator from the list of arbitrators provided by the Secretariat. If a party fails to nominate an arbitrator within provided time frame, the selection and appointment of the arbitrators shall be made by the Board from the list of arbitrators maintained by the Secretariat for this purpose.

5. Where the dispute is to be referred to three arbitrators, the third arbitrator will act as the president of the arbitral tribunal. Irrespective of the nominating authorities, the third arbitrator shall be appointed from the list of arbitrators free prepared and maintained by the Secretariat under the authorization of the Board.
6. Parties are free to agree on a procedure for appointing the arbitrator.
7. Where there are multiple claimants or multiple respondents, and where the dispute is to be referred to three arbitrators, the multiple claimants, jointly, and the multiple respondents, jointly, shall nominate an arbitrator for confirmation pursuant to Article 6.
8. Where an additional party has been joined and where the dispute is to be referred to three arbitrators, the additional party may, jointly with the claimant or with the respondent, nominate an arbitrator for confirmation pursuant to Article 8.
9. In the absence of a joint nomination pursuant to Articles 6(8) and where all parties are unable to agree to a method for the constitution of the arbitral tribunal, the Board may appoint each member of the arbitral tribunal and shall designate one of them to act as president. In such case, the Board shall be at liberty to choose any person it regards as suitable to act as arbitrator from the prefixed list of arbitrators, applying Article 8 when it considers this appropriate.

Woman Arbitrator

- 10.** Where one of the parties of the arbitration agreement is woman- the appointed sole arbitrator shall be made to a woman and in case of an arbitral panel consisting of three arbitrators at least of the arbitrators shall be a woman.

General Provisions:

- 11.** Insofar as the parties have not provided otherwise, the arbitral tribunal shall be constituted in accordance with the provisions of Articles 6 and 8.

The decisions of the Board as to the appointment, confirmation, challenge or replacement of an arbitrator shall be final.

ARTICLE 7: Arbitrators Responsibilities

- 1.** Every arbitrator must be and remain impartial and independent of the parties involved in the arbitration.
- 2.** Before appointment or confirmation, a prospective arbitrator shall sign a statement of acceptance, availability, impartiality and independence. The prospective arbitrator shall disclose in writing to the Secretariat any facts or circumstances which might be of such a nature as to call into question the arbitrator's independence in the eyes of the parties, as well as any circumstances that could give rise to reasonable doubts as to the arbitrator's impartiality. The Secretariat shall provide such information to the parties in writing and fix a time limit for any comments from them.
- 3.** An arbitrator shall immediately disclose in writing to the Secretariat and to the parties any facts or circumstances of a similar nature to those referred to in Article 7(2) concerning the arbitrator's impartiality or independence which may arise during the arbitration.

4. By accepting to serve, arbitrators undertake to carry out their responsibilities in accordance with the Rules.

ARTICLE 8: Appointment and Confirmation of the Arbitrators

1. In confirming or appointing arbitrators, the Board shall consider the prospective arbitrator(s) business and other relationships, if any, with the parties and/or the persons representing or involved with the parties which may raise reasonable doubts regarding the arbitrator(s) independence and impartiality.
2. The Secretary General may ask for clarification from the prospective arbitrators and parties regarding any probable conflict of interest pursuant to Article 7(2). If the Secretary General considers that a co-arbitrator, sole arbitrator or president of an arbitral tribunal should not be confirmed, the matter shall be submitted to the Board with reasonable explanations.
3. Where an interim vacancy is created pursuant to Rule 9 or Rule 10.1, or for any other reason, the Secretary General may be confirmed as sole arbitrator, co-arbitrator and president of arbitral tribunal by the parties or pursuant to their particular agreements, provided that the statement they have submitted contains no qualification regarding impartiality or independence or that a qualified statement regarding impartiality or independence has not given rise to objections. Such confirmation shall be confirmed by the Board.
4. The appointment of the sole arbitrator or panel of arbitrators shall be made within thirty (30) days from the receipt of the nomination thereof.

ARTICLE 9: Challenge of Arbitrators

1. An arbitrator may be challenged only if
 - (a) circumstances exist that give rise to reasonable and justifiable doubts as to his/her impartiality or independence to perform the functions of his/her office, unless that have already been so informed to the parties by him/her;
 - (b) doubts exist regarding his/her ability or capacity or qualification for which or for other reasons s/he fails to act without undue delay
2. A challenge of an arbitrator pursuant to Article 9(1) shall be made by the submission to the Secretary General of a written statement specifying the facts and circumstances on which the challenge is based.
3. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made. For a challenge to be admissible, it must be submitted by a party either within thirty (30) days from receipt by that party of the notification of the appointment or confirmation of the arbitrator, or within 30 days from the date when the party making the challenge was informed of the facts and circumstances on which the challenge is based, if such date is subsequent to the receipt of such notification.
4. The Board shall decide on the admissibility and, at the same time, if necessary, on the merits of a challenge within thirty (30) days after the Secretary General has afforded an opportunity for the arbitrator concerned, the other party or parties and any other members of the arbitral tribunal to comment in writing. Such comments shall be communicated to the parties and to the arbitrators. The Board may ask for Expert Committee's opinion and the decision of the Board in deciding the challenge shall be final.

5. If a challenge under the Rules proves to be not successful, the arbitral tribunal shall continue the arbitral proceedings and make an award.

ARTICLE 10: Replacement or Substitution of Arbitrators

1. An arbitrator shall be replaced upon death, upon acceptance by the Board of the arbitrator's resignation, upon acceptance by the Board of a challenge, or upon acceptance by the Board of a request of all the parties.
2. An arbitrator shall also be replaced on the Board's own initiative when it decides that the arbitrator is prevented de jure or de facto from fulfilling the arbitrator's functions, or that the arbitrator is not fulfilling those functions in accordance with the Rules or within the prescribed time limits.
3. When, on the basis of information that has come to its attention, the Board considers applying Article 10(2), it shall decide on the matter after the arbitrator concerned, the parties and any other members of the arbitral tribunal have had an opportunity to comment in writing within a suitable period of time fixed by the Board. Such comments shall be communicated to the parties and to the arbitrator(s).
4. When an arbitrator is to be replaced, the Board has discretion to decide whether or not to follow the original nominating process. Once reconstituted, and after having invited the parties to comment, the arbitral tribunal shall determine if and to what extent prior proceedings shall be repeated before the reconstituted arbitral tribunal.
5. Subsequent to the closing of the proceedings, instead of replacing an arbitrator who has died or been removed by the Court pursuant to Articles 10(1) or 10(2), the Court may decide, when it considers it appropriate, that the remaining arbitrators shall continue the arbitration. In making such determination, the Court shall take into account the views of

the remaining arbitrators and of the parties and such other matters that it considers appropriate in the circumstances.

ARTICLE 11: Objection as to the Jurisdiction of the Arbitral Tribunal

1. An objection that the tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence.
2. An objection during the arbitral proceedings that the tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority occurs.
3. The Office of the Secretary General, on the receipt of any such objection from any the parties, shall serve notice upon all other parties and the arbitrator or arbitrators, and refer the question lately raised as to the jurisdiction of the arbitral tribunal to the tribunal.
4. No application under this section may be taken into account unless the Office of the Secretary General is satisfied that-
 - (a) the determination of the question is likely to produce substantial savings in costs;
 - (b) the application was submitted without any delay and
 - (c) there is a good reason why the matter should be taken into account.
5. The Secretary General may in either of the cases referred to in Rules 11.2 and 11.3, admit a later plea if it considers the delay justified and transmit the matter to the tribunal.
6. The arbitral tribunal shall decide on an objection referred to in Rule 11.1 and Rule 11.2, and where the tribunal takes a decision rejecting the plea, it shall continue with the arbitral proceedings and make an award.

7. A party shall not be precluded from raising such a plea merely because that he has appointed or participated in the appointment of an arbitrator. Any party aggrieved by the decision of the arbitral tribunal may appeal against the decision to the Board.

ARTICLE 12: Request for Arbitration

1. A party wishing to have recourse to arbitration under the Rules shall submit its Request for Arbitration (the “Request”) to the Secretariat. The Secretariat shall notify the claimant and respondent of the receipt of the Request and the date of such receipt.
2. The date on which the Request is received by the Secretariat shall, for all purposes, be deemed to be the date of the commencement of the arbitration.
3. The Request shall contain the following information:
 - (a) the name in full, description, address and other contact details of each of the parties;
 - (b) the name in full, address and other contact details of any person(s) representing the claimant in the arbitration;
 - (c) a description of the nature and circumstances of the dispute giving rise to the claims and of the basis upon which the claims are made;
 - (d) a statement of the relief sought, together with the amounts of any quantified claims and, to the extent possible, an estimate of the monetary value of any other claims;
 - (e) any relevant agreements and, in particular, the arbitration agreement(s);
 - (f) where claims are made under more than one arbitration agreement, an indication of the arbitration agreement under which each claim is made;

(g) all relevant particulars and any observations or proposals concerning the number of arbitrators and their choice in accordance with the provisions of Articles 6 and 8, and any nomination of an arbitrator required thereby; and

(h) all relevant particulars and any observations or proposals as to the place of the arbitration, the applicable rules of law and the language of the arbitration.

The claimant may submit such other documents or information with the Request as it considers appropriate or as may contribute to the efficient resolution of the dispute.

4. Together with the Request, the claimant shall:

(a) submit the number of copies thereof required by Article 4(1); and

(b) make payment of the filing fee to the Secretariat.

In the event that the claimant fails to comply with either of these requirements, the Secretariat may fix a time limit within which the claimant must comply, failing which the file shall be closed without prejudice to the claimant's right to submit the same claims at a later date in another Request.

5. The Secretariat shall transmit a copy of the Request and the documents annexed thereto to the respondent for its Answer to the Request once the Secretariat has sufficient copies of the Request and the required filing fee.

ARTICLE 13: Answer to the Request; Counterclaims

1. Within thirty (30) days from the receipt of the Request from the Secretariat, the respondent shall submit an Answer (the "Answer") which shall contain the following information:

(a) its name in full, description, address and other contact details;

- (b) the name in full, address and other contact details of any person(s) representing the respondent in the arbitration;
- (c) its comments as to the nature and circumstances of the dispute giving rise to the claims and the basis upon which the claims are made;
- (d) its response to the relief sought;
- (e) any observations or proposals concerning the number of arbitrators and their choice in light of the claimant's proposals and in accordance with the provisions of Articles 6 and 8, and any nomination of an arbitrator required thereby; and
- (f) any observations or proposals as to the place of the arbitration, the applicable rules of law and the language of the arbitration.

The respondent may submit such other documents or information with the Answer as it considers appropriate or as may contribute to the efficient resolution of the dispute

2. The Secretariat may grant the respondent an extension of the time for submitting the Answer, provided the application for such an extension contains the respondent's observations or proposals concerning the number of arbitrators and their choice and, where required by Articles 6 and 8, the nomination of an arbitrator. If the respondent fails to do so, the Secretariat shall proceed in accordance with the Rules.
3. The Answer shall be submitted to the Secretariat in the number of copies specified by Article 4(1).
4. The Secretariat shall communicate the Answer and the documents annexed thereto to all other parties.
5. Any counterclaims made by the respondent shall be submitted with the Answer and shall provide:

- (a) a description of the nature and circumstances of the dispute giving rise to the counterclaims and of the basis upon which the counterclaims are made;
- (b) a statement of the relief sought together with the amounts of any quantified counterclaims and, to the extent possible, an estimate of the monetary value of any other counterclaims;
- (c) any relevant agreements and, in particular, the arbitration agreement(s); and
- (d) where counterclaims are made under more than one arbitration agreement, an indication of the arbitration agreement under which each counterclaim is made.

The respondent may submit such other documents or information with the counterclaims as it considers appropriate or as may contribute to the efficient resolution of the dispute.

6. The claimant shall submit a reply to any counterclaim within 30 days from the date of receipt of the counterclaims communicated by the Secretariat. Prior to the transmission of the file to the arbitral tribunal, the Secretariat may grant the claimant an extension of time for submitting the reply.

ARTICLE 14: Joinder of Additional Parties

1. A party wishing to join an additional party to the arbitration shall submit its request for arbitration against the additional party (the “Request for Joinder”) to the Secretariat. The date on which the Request for Joinder is received by the Secretariat shall, for all purposes, be deemed to be the date of the commencement of arbitration against the additional party. Any such joinder shall be subject to the provisions of Articles 5(3) – 5(6) and 16. No additional party may be joined after the confirmation or appointment of any arbitrator, unless all parties, including the additional party, otherwise agree. The Secretariat may fix a time limit for the submission of a Request for Joinder.

2. The Request for Joinder shall contain the following information:
 - (a) the case reference of the existing arbitration;
 - (b) the name in full, description, address and other contact details of each of the parties, including the additional party; and
 - (c) the information specified in Article 12(3), subparagraphs (c), (d), (e) and (f).
3. The party filing the Request for Joinder may submit therewith such other documents or information as it considers appropriate or as may contribute to the efficient resolution of the dispute.

The provisions of Articles 12(4) and 12(5) shall apply, *mutatis mutandis*, to the Request for Joinder.
4. The additional party shall submit an Answer in accordance, *mutatis mutandis*, with the provisions of Articles 13(1)–13(4). The additional party may make claims against any other party in accordance with the provisions of Article 15.

ARTICLE 15: Claims Between Multiple Parties

1. In an arbitration with multiple parties, claims may be made by any party against any other party, subject to the provisions of Articles 5(3) – 5(6) and 16 and provided that no new claims may be made after the Terms of Reference are signed or approved by the Court without the authorization of the arbitral Tribunal pursuant to Article 24(4). Any party making a claim pursuant to Article 15(1) shall provide the information specified in Article 12(3), subparagraphs (c), (d), (e) and (f).
2. Before the Secretariat transmits the file to the arbitral tribunal in accordance with Article 18, the following provisions shall apply, *mutatis mutandis*, to any claim made: Article 12(4) subparagraph a); Article 12(5); Article 13(1) except for subparagraphs (a), (b), (e)

and (f); Article 13(2); Article 13(3) and Article 13(4). Thereafter, the arbitral tribunal shall determine the procedure for making a claim.

ARTICLE 16: Multiple Contracts

Subject to the provisions of Articles 5(3)–5(6) and 24(4), claims arising out of or in connection with more than one contract may be made in a single arbitration, irrespective of whether such claims are made under one or more than one arbitration agreement under the Rules.

ARTICLE 17: Consolidation of Arbitration

The Secretariat may in consultation with the Expert Committee, at the request of a party, consolidate two or more arbitrations pending under the Rules into a single arbitration, where:

- (a) the parties have agreed to consolidation; or
- (b) all of the claims in the arbitrations are made under the same arbitration agreement; or
- (c) where the claims in the arbitrations are made under more than one arbitration agreement, the arbitrations are between the same parties, the disputes in the arbitrations arise in connection with the same legal relationship, and the Secretariat finds the arbitration agreements to be compatible.

In deciding whether to consolidate, the Secretariat may take into account any circumstances it considers to be relevant, including whether one or more arbitrators have been confirmed or appointed in more than one of the arbitrations and, if so, whether the same or different persons have been confirmed or appointed. When arbitrations are

consolidated, they shall be consolidated into the arbitration that commenced first, unless otherwise agreed by all parties.

ARTICLE 18: Transmission of the File to the Arbitral Tribunal

The Secretariat shall transmit the file to the arbitral tribunal as soon as it has been constituted, provided the advance on costs requested by the Secretariat at this stage has been paid.

ARTICLE 19: Place of Arbitration

1. The place of the arbitration shall be fixed by the Secretariat, unless agreed upon by the parties.
2. In fixing the place of arbitration the financial situation and convenience of the parties shall be taken into consideration by the Secretariat.
3. Notwithstanding anything contained in Articles 19.1, or Rule 19.2, the arbitral tribunal may, after consultation with the parties, conduct hearings and meetings, and deliberate at any location it considers appropriate unless otherwise agreed by the parties.

ARTICLE 20: Proof of Authority

At any time after the commencement of the arbitration, the arbitral tribunal or the Secretariat may require proof of the authority of any party representatives.

ARTICLE 21: Rules Governing the Proceedings

1. The proceedings before the arbitral tribunal shall be governed by the BAIRA Arbitration Rules and, where the BAIRA Rules are silent, by any rules which the parties or, failing them, the arbitral tribunal may settle on, whether or not reference is

- thereby made to the provisions of rules of procedure of the national law to be applied to the arbitration.
2. The parties may opt out from or amend any of the provisions of the Rules before the initiation of the proceedings and shall inform the Secretariat of such change. In the absence of any such agreement the proceedings shall be governed by the parties.
 3. In absence of an agreement the tribunal may bifurcate to the expedited track for a speedy resolution with the consent of the Secretariat even in a dispute where claim exceeds BDT.5, 00,000.00. The Secretary General may ask for opinion of the Expert Committee on the matter. If Secretary shall communicate the reasoning's for preferring such expedited track to the parties. The Secretariat will not take more than twenty one (21) days to confer its decision.

ARTICLE 22: Language of The Arbitration

The language of the arbitration will be Bengali, unless otherwise agreed by the parties. However, the arbitral will deliberate in both in English and Bengali and in a conflict between the Bengali and English meaning of the award, the Bengali shall prevail.

ARTICLE 23: Conduct of The Arbitration

1. The arbitral tribunal and the parties shall make every effort to conduct the arbitration in an expeditious and cost-effective manner, having regard to the gravity and value of the dispute.
2. In order to ensure effective case management, the arbitral tribunal, after consulting the parties, may adopt such procedural measures as it considers appropriate, provided that they are not contrary to any agreement of the parties.

3. Upon the request of any party and being convinced, the arbitral tribunal may make orders concerning the confidentiality of the arbitration proceedings or of any other matters in connection with the arbitration and may take measures for protecting trade secrets and confidential information.

4. In all cases, the arbitral tribunal shall act fairly and impartially and for this purpose–

(a) each party shall be given reasonable opportunity to present his case orally or in writing or both and

(b) each party shall be given reasonable opportunity to examine all the documents and other relevant materials filed by other party or any other person concerned before the tribunal.

5. The parties undertake to comply with any order made by the arbitral tribunal.

ARTICLE 24: Terms of Reference

1. As soon as it has received the file from the Secretariat, the arbitral tribunal shall draw up, on the basis of documents or in the presence of the parties and in the light of their most recent submissions, a document defining its Terms of Reference. This document shall include the following particulars:

(a) the names in full, description, address and other contact details of each of the parties and of any person(s) representing a party in the arbitration;

(b) the addresses to which notifications and communications arising in the course of the arbitration may be made;

(c) a summary of the parties' respective claims and of the relief sought by each party, together with the amounts of any quantified claims and, to the extent possible, an estimate of the monetary value of any other claims;

- (d) unless the arbitral tribunal considers it inappropriate, a list of issues to be determined;
 - (e) the names in full, address and other contact details of each of the arbitrators;
 - (f) the place of the arbitration; and
 - (g) particulars of the applicable procedural rules and, if such is the case, reference to the power conferred upon the arbitral tribunal by the Rules to act as *amiable compositeur* or to decide *ex aequo et bono*.
2. The Terms of Reference shall be signed by the parties and the arbitral tribunal. Within thirty (30) days of the date on which the file has been transmitted to it, the arbitral tribunal shall transmit to the Secretariat the Terms of Reference signed by it and by the parties. The Secretariat may extend this time limit pursuant to a reasoned request from the arbitral tribunal or on its own initiative if it decides it is necessary to do so.
 3. If any of the parties refuses to take part in the drawing up of the Terms of Reference or to sign the same, they shall be submitted to the Secretariat for approval. When the Terms of Reference have been signed in accordance with Article 24(2) or approved by the Secretariat in consultation with the Expert Committee, the arbitration shall proceed.
 4. After the Terms of Reference have been signed or approved by the Secretariat, no party shall make new claims which fall outside the limits of the Terms of Reference unless it has been authorized to do so by the arbitral tribunal, which shall consider the nature of such new claims, the stage of the arbitration and other relevant circumstances.

ARTICLE 25: Case Management Conference and Procedural Timetable

1. When drawing up the Terms of Reference or as soon as possible thereafter, the arbitral tribunal shall convene a case management conference to consult the parties on procedural

measures that may be adopted pursuant to Article 23(2). Such measures may include one or more of the case management techniques described in Appendix III.

2. During or following such conference, the arbitral tribunal shall establish the procedural timetable that it intends to follow for the conduct of the arbitration. The procedural timetable and any modifications thereto shall be communicated to the Court and the parties.
3. To ensure continued effective case management, the arbitral tribunal, after consulting the parties by means of a further case management conference or otherwise, may adopt further procedural measures or modify the procedural timetable.
4. Case management conferences may be conducted through a meeting in person, by videoconference, telephone or similar means of communication. In the absence of an agreement of the parties, the arbitral tribunal shall determine the means by which the conference will be conducted. The arbitral tribunal may request the parties to submit case management proposals in advance of a case management conference and may request the attendance at any case management conference of the parties in person or through an internal representative.

ARTICLE 26: Establishing the Facts of the Case

1. The arbitral tribunal shall proceed within short a time as possible to establish the facts of the case by all appropriate means.
2. After studying the written submissions of the parties and all documents relied upon, the arbitral tribunal shall hear the parties together in person if any of them so requests or, failing such a request, it may of its own motion decide to hear them.

3. The arbitral tribunal may decide to hear witnesses, experts appointed by the parties or any other person, in the presence of the parties, or in their absence provided they have been duly summoned.
4. The arbitral tribunal, after having consulted the parties, may appoint one or more experts, define their terms of reference and receive their reports. At the request of a party, the parties shall be given the opportunity to question at a hearing any such expert.
5. At any time during the proceedings, the arbitral tribunal may summon any party to provide additional evidence.
6. The arbitral tribunal may decide the case solely on the documents submitted by the parties unless any of the parties requests a hearing.

ARTICLE 27: Hearings

1. Unless otherwise agreed by the parties, the tribunal shall decide whether to hold oral hearings for the presentation of evidence or oral argument, or whether the proceedings shall be conducted by documents and other materials.
2. When a hearing is to be held, the arbitral tribunal, giving reasonable notice, shall summon the parties to appear before it on the day and at the place fixed by it.
3. If any of the parties, although duly summoned, fails to appear without valid excuse, the arbitral tribunal shall have the power to proceed with the hearing.
4. The arbitral tribunal shall be in full charge of the hearings, at which all the parties shall be entitled to be present. Save with the approval of the arbitral tribunal and the parties, persons not involved in the proceedings shall not be admitted.
5. The parties may appear in person or through duly authorized representatives. In addition, they may be assisted by advisers.

ARTICLE 28: Closing of the Proceedings and Date for Submission of Draft Awards

1. As soon as possible after the last hearing concerning matters to be decided in an award or the filing of the last authorized submissions concerning such matters, whichever is later, the arbitral tribunal shall:
 - (a) declare the proceedings closed with respect to the matters to be decided in the award; and
 - (b) in form the Secretariat and the parties of the date by which it expects to submit its draft award to the Secretariat for review pursuant to Article 39.
2. After the proceedings are closed, no further submission or argument may be made, or evidence produced, with respect to the matters to be decided in the award, unless requested or authorized by the arbitral tribunal.

ARTICLE 29: Interim Measures

1. Unless otherwise agreed by the parties, as soon as the file has been transmitted to it. the arbitral tribunal may, at the request of a party, order any interim measure as it considers necessary in respect of the subject matter of the dispute, and no appeal shall lie against this order.
2. The arbitral tribunal may require the requesting party to provide appropriate security in connection with a measure ordered under sub-section (1). Any such measure shall take the form of an order, giving reasons, or of an award, as the arbitral tribunal considers appropriate and no such award or order under this section shall be passed without giving notice to the other parties, provided, the arbitral tribunal may, where it appears that the object of taking interim measure under this section would be defeated by the delay, dispense with such notice.

3. An order of the arbitral tribunal requiring the taking of interim measures may be enforced by the court, on an application made thereof, by the party requesting the taking of such interim measures.

4. Before the file is transmitted to the arbitral tribunal and in appropriate circumstances even thereafter, the parties may apply to any competent judicial authority for interim or conservatory measures. The application of a party to a judicial authority for such measures or for the implementation of any such measures ordered by an arbitral tribunal shall not be deemed to be an infringement or a waiver of the arbitration agreement and shall not affect the relevant powers reserved to the arbitral tribunal.

Any such application and any measures taken by the judicial authority must be notified without delay to the Secretariat. The Secretariat shall inform the arbitral tribunal thereof.

ARTICLE 30: Emergency Arbitrator

1. A party that needs urgent interim measures that cannot await the constitution of an arbitral tribunal (“Emergency Measures”) may make an application for such measures pursuant to the Emergency Arbitrator Rules in Appendix IV. Any such application shall be accepted only if it is received by the Secretariat prior to the transmission of the file to the arbitral tribunal pursuant to Article 16 and irrespective of whether the party making the application has already submitted its Request for Arbitration.

2. The emergency arbitrator’s decision shall then take the form of an order. The parties undertake to comply with any order made by the emergency arbitrator.

3. The emergency arbitrator’s order shall not bind the arbitral tribunal with respect to any question, issue or dispute determined in the order. The arbitral tribunal may modify,

terminate or annul the order or any modification thereto made by the emergency arbitrator.

4. The arbitral tribunal shall decide upon any party's requests or claims related to the emergency arbitrator proceedings, including the reallocation of the costs of such proceedings and any claims arising out of or in connection with the compliance or noncompliance with the order.
5. Articles 30(1)–30(4) and the Emergency Arbitrator Rules set forth in Appendix IV (collectively the “Emergency Arbitrator Provisions”) shall apply only to parties that are either signatories of the arbitration agreement under the Rules that is relied upon for the application or successors to such signatories.
6. The Emergency Arbitrator Provisions shall not apply if:
 - (a) the parties have agreed to opt out of the Emergency Arbitrator Provisions; or
 - (b) the parties have agreed to another pre-arbitral procedure that provides for the granting of conservatory, interim or similar measures.
7. The Emergency Arbitrator Provisions are not intended to prevent any party from seeking urgent interim or conservatory measures from a competent judicial authority at any time prior to making an application for such measures, and in appropriate circumstances even thereafter, pursuant to the Rules. Any application for such measures from a competent judicial authority shall not be deemed to be an infringement or a waiver of the arbitration agreement. Any such application and any measures taken by the judicial authority must be notified without delay to the Secretariat.

ARTICLE 31: Expedited Procedure

1. By agreeing to arbitration under the Rules, the parties agree that this Article 31 and the Expedited Procedure Rules set forth in Appendix V (collectively the “Expedited Procedure Provisions”) shall take precedence over any contrary terms of the arbitration agreement.
2. The Expedited Procedure Rules set forth in Appendix V shall apply if:
 - (a) the amount in dispute does not exceed the limit set out in Article 1(2) of Appendix V at the time of the communication referred to in Article 1(3) of that Appendix; or
 - (b) the parties so agree.
3. The Expedited Procedure Provisions shall not apply if:
 - (a) the arbitration agreement under the Rules was concluded before the date on which the Expedited Procedure Provisions came into force;
 - (b) the parties have agreed to opt out of the Expedited Procedure Provisions; or
 - (c) the Court, upon the request of a party before the constitution of the arbitral tribunal or on its own motion, determines that it is inappropriate in the circumstances to apply the Expedited Procedure Provisions.

ARTICLE 32: Settlement other than Arbitration

1. It shall not be incompatible with an arbitration agreement for the arbitral tribunal to encourage settlement of the dispute otherwise than by arbitration and with the agreement of all the parties, the arbitral tribunal may use mediation, conciliation or any other procedures at anytime during the arbitral proceedings to encourage settlement.

2. The arbitral tribunal at the case management conference shall propose the parties for mediation and if the parties agree to the proposal then a date for mediation will be settled and such decision shall be communicated to the Secretariat by the parties.
3. The parties shall sign a confidentiality agreement before initiating the mediation procedure and the original of this agreement shall be kept with the Secretariat. Arguments presented, documents submitted and evidenced produced during the mediation under confidentiality agreement shall not be used by the parties in arbitration or judicial proceedings against one another.
4. Unless otherwise agreed, in an arbitration conducted by sole arbitrator, the arbitrator shall act as a mediator and in an arbitration conducted by three arbitrators, the president of the arbitral tribunal shall act as the mediator.
5. If during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall, if requested by the parties, record the settlement in the form of an arbitral award on agreed terms.
6. An arbitral award on agreed terms shall be made by section 38 and shall state that it is an arbitral award on agreed terms and shall have the same status and effect as any other arbitral award made in respect of the dispute.

ARTICLE 33: Waiver of Right to Object

1. A party who knows that-
 - (a) any provision of the Rules from which the parties may derogate, or
 - (b) any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such noncompliance without undue delay, or

- (c) if a time limit is provided therefor within such period, shall be deemed to have waived his right to such an object.

ARTICLE34: Power to Appoint Experts, Legal Advisers or Assessors

1. Unless otherwise agreed by the parties, the arbitral tribunal may-

- (a) appoint an expert or legal adviser to report to it on issues to be determined by the tribunal; and
- (b) appoint an assessor to assist it on technical matters; and
- (c) require a party to give the expert, legal adviser or the assessor, as the case may be, any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

2. Unless otherwise agreed by the parties or decide by the tribunal under the Rules

- (a) if a party or the arbitral tribunal so requests, the expert, legal adviser or the assessor, as the case may be, shall after delivery of his written or oral report, participate in an oral hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue;
- (b) the expert, legal adviser or the assessor, as the case may be, shall, on the request of a party, make available to that party all documents, goods or other property in possession of him with which he was provided to prepare his report;
- (c) the parties shall be given reasonable opportunity to comment on the report, information, opinion or advice submitted in the tribunal by the expert, legal adviser or the assessor.

ARTICLE35: Production of Evidence and Administering Oath

1. Unless otherwise agreed by the parties-

- (a) evidencemay be given before the arbitral tribunal orally or in writing or by affidavit;
- (b) the arbitral tribunal may administer an oath or affirmation to a witness subject to his consent.

ARTICLE36: Powers of the Arbitral Tribunal in case of Default of the Parties

1. The parties shall be free to agree on the powers of the arbitral tribunal in case of a party's failure to do anything necessary for the proper and expeditious conduct of the arbitration.

2. Where

- (a) any claimant fails to communicate his statement of claim; the tribunal shall terminate the proceedings, and
- (b) the respondent fails to communicate his statement of defense; the tribunal shall continue the proceeding without treating that failure in itself as an admission of the allegations by the claimant.

3. If without showing sufficient cause a party -

- (b) fails to attend or be represented at an oral hearing of which due notice was given or
- (c) where matters are to be dealt with in writing fails, after due notice, to submit written evidence or make written submissions, the tribunal may continue the proceedings in the absence of that party or, as the case may be, without any written evidence or submissions on his behalf and may make an award on the basis of the evidence before it.

4. If without showing sufficient cause a party fails to comply with any order or directions of the arbitral tribunal, the tribunal may make an order to comply with such order or directions within such time as it may deem fit.
5. If a claimant fails to comply with an order of the arbitral tribunal to provide security for costs, the tribunal may make an award dismissing his claim.
6. If a party fails to comply with any other kind of order not referred to in any of the subsections of this section, then the arbitral tribunal may -
 - (a) direct that the party in default shall not be entitled to rely upon any allegation or material which was the subject-matter of the order;
 - (b) draw such adverse inferences from the act of non-compliance as the circumstances justify;
 - (c) proceed to an award by such materials as have been adequately provided to it; or
 - (d) make such order, as it thinks fit, as to the payment of costs of the arbitration incurred in consequence of the non-compliance.

ARTICLE 37: Closing of the Proceedings and Date for Submission of Draft Awards

1. As soon as possible after the last hearing concerning matters to be decided in an award or the filing of the last authorized submissions concerning such matters, whichever is later, the arbitral tribunal shall:
 - (a) declare the proceedings closed with respect to the matters to be decided in the award; and
 - (b) inform the Secretariat and the parties of the date by which it expects to submit its draft award to the Secretariat for approval pursuant to Article 39.

2. After the proceedings are closed, no further submission or argument may be made, or evidence produced, with respect to the matters to be decided in the award, unless requested or authorized by the arbitral tribunal

ARTICLE 38: Making of Award

1. The time limit within which the arbitral tribunal must render its final award is six months. Such time limit shall start to run from the date of the last signature by the arbitral tribunal or by the parties of the Terms of Reference or, in the case of application of Article 24(3), the date of the notification to the arbitral tribunal by the Secretariat of the approval of the Terms of Reference by the Court. The Court may fix a different time limit based upon the procedural timetable established pursuant to Article 25(2).
2. An arbitral award shall be in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.
3. An award shall state the reasons upon which it is based. The arbitral tribunal shall decide by the terms of the contract taking into account the usages of the concerned matter, if any, for ends of justice.
4. When the arbitral tribunal is composed of more than one arbitrator, an award is made by a majority decision. If there is no majority, the award shall be made by the president of the arbitral tribunal alone.
5. The arbitral award shall state its date, and the place of arbitration and the award shall be deemed to be made at the place of the arbitration and on the date stated therein.
6. Unless otherwise agreed by the parties-

- a. Where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made an Interest, at such rate as it deems reasonable, on the whole, or any part of money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.
 - b. A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two percent per annum which is more than the usual Bank rate from the date of the award to the date of payment.

Explanation - "Bank Rate" under this sub-section means the rate of interest as determined by the Bangladesh Bank from time to time.
7. The language of the Arbitral award shall be Bangla and a translated English copy of the award shall be provided to the parties by the Secretariat at the request of the party. Such request has to be made in writing to the Secretariat before the end of arbitral proceedings. The translated copy of the award shall be reviewed by the arbitrators and shall be signed and dated duly.
 8. After the arbitral award is made, a copy signed by the arbitrator or arbitrators shall be delivered to each party.

ARTICLE 39: Scrutiny of the Award by the Expert Committee

Before signing an award, the arbitral tribunal shall submit it in draft form to the Secretariat for scrutiny. The Secretariat with the power given to it under internal Rules shall refer the draft award for comment to the Expert Committee and will transmit the draft award with comments of the Expert Committee to the arbitral tribunal. The Secretariat cannot take more than thirty (30) days to scrutinize the draft award. The arbitral tribunal then finalizes the

award with the assistance of the Secretariat. No award shall be rendered by the arbitral tribunal until it is reviewed by the Secretariat and the Expert Committee.

ARTICLE 40: Award to be Final and Binding

1. Every award shall be binding on the parties. By submitting the dispute to arbitration under the Rules, the parties undertake to carry out any award without delay and shall be deemed to have waived their right to any form of recourse insofar as such waiver can validly be made. The aggrieved party, usually the migrant worker, shall get thirty (30) days from the date of award to accept or reject the award.
2. At the expiry of thirty (30) days specified in Section 39.1 or acceptance on or before that, an arbitral award made shall be final and binding on both the parties and on any persons claiming through or under them.
3. Notwithstanding anything contained in sub-section (1) the right of a person to challenge the arbitral award by the provisions of this Act shall not be affected.

ARTICLE 41: Notification, Deposit and Enforceability of the Award

1. Once an award has been made, the Secretariat shall notify to the parties the text signed by the arbitral tribunal, provided always that the costs of the arbitration have been fully paid to the Secretariat by the parties or by one of them.
2. Additional copies certified true by the Secretary General shall be made available on request and at any time to the parties, but to no one else.
3. By virtue of the notification made in accordance with Article 39(1), the parties waive any other form of notification or deposit on the part of the arbitral tribunal.
4. An original of each award made in accordance with the Rules shall be deposited with the Secretariat.

5. The arbitral tribunal and the Secretariat shall assist the parties in complying with whatever further formalities may be necessary.
6. Where the time for making an application to set aside an arbitral award pursuant to the provisions of the Arbitration Act 2001 has expired, or such application having been made, has been refused, the award shall be enforced under the Code of Civil Procedure, in the same manner as if it were a decree of the Court.

Explanation: The expression “Court” in this section means the Court within the local limits of whose jurisdiction the arbitral award has been finally made and signed.

ARTICLE 42: Correction and Interpretation of the Award; Remission of Awards

1. On its own initiative, the arbitral tribunal may correct a clerical, computational or typographical error, or any errors of similar nature contained in an award, provided such correction is submitted for approval to the Secretariat within twenty-one (21) days of the date of such award.
2. Any application of a party for the correction of an error of the kind referred to in Article 42(1), or for the interpretation of an award, must be made to the Secretariat within twenty one (21) days of the receipt of the award by such party, in a number of copies as stated in Article 4(1). After transmittal of the application to the arbitral tribunal, the latter shall grant the other party a short time limit, normally not exceeding twenty one (21) days, from the receipt of the application by that party, to submit any comments thereon. The arbitral tribunal shall submit its decision on the application in draft form to the Secretariat not later than fourteen (14) days following the expiration of the time limit for the receipt of any comments from the other party or within such other period as the Secretariat may decide with the approval of the Board.

3. A decision to correct or to interpret the award shall take the form of an addendum and shall constitute part of the award. The provisions of Articles 38, 39 and 41 shall apply *mutatis mutandis*.
4. Where a court remits an award to the arbitral tribunal, the provisions of Articles 38, 39, 41 and this Article 42 shall apply *mutatis mutandis* to any addendum or award made pursuant to the terms of such remission. The Board may take any steps as may be necessary to enable the arbitral tribunal to comply with the terms of such remission and may fix an advance to cover any additional fees and expenses of the arbitral tribunal and any additional administrative expenses.
5. Unless otherwise agreed by the parties, a party with a notice to the other party, may request, within twenty one (21) days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award. If the tribunal considers the request to be justified, it shall make the additional arbitral award within sixty (60) days from the date of receipt of such request. A decision to make an additional arbitral award shall also take the form of an addendum and shall constitute part of the award and the provisions of Articles 38, 39 and 41 shall also apply *mutatis mutandis*.

ARTICLE 43: Cost of Arbitration

1. Unless otherwise agreed by the parties -
 - (a) the costs of an arbitration shall be paid by BAIRA ;or the party or parties other than the aggrieved migrant workers; and
 - (b) the Secretariat shall specify
 - i. the party entitled to costs;

- ii. the party who shall pay the costs;
- iii. the number of costs or method of determining that amount, and
- iv. how the costs shall be paid.

Explanation- Under this sub-section, 'arbitration costs include reasonable costs relating to the fees and expenses of the arbitrators and witnesses; any administration fees of the institution supervising the arbitration and any other expenses incurred in connection with the arbitral proceedings and the arbitral award.

2. BAIRA member agencies may contribute to an ADR fund through an annual subscription, not for individual disputes resolved.
3. If any recruitment agency or recruitment Dalal unduly delay the process by not being present in arbitral sessions, not submitting or delaying the submission of required documents, or otherwise, without having any reasonable ground explained before the tribunal, the arbitral tribunal with the recommendation of the Secretariat may impose a part of the total cost to that agency or Dalal as a punishment for such conduct.

ARTICLE 44: Arbitration Agreement not to be Discharged by the Death of Parties to It

1. Unless otherwise agreed by the parties-
 - (a) an arbitration agreement shall not be discharged because of the death of any party to it, but shall in such event be enforceable by or against the legal representative of the deceased;
 - (b) the mandate of an arbitrator shall not be affected by the death of any party by whom he was appointed.
2. Nothing in this section shall affect the operation of any law relating to abatement of right through the death of a person.

ARTICLE 45: Provision in Case of Bankruptcy

1. Where it is provided by a term in a contract to which an insolvent is a party that any dispute arising there from or in connection therewith shall be submitted to arbitration, the said term shall, if the receiver adopts the contract, be enforceable by or against him so far as it relates to any such dispute.
2. Where a person who has been adjudged an insolvent had, before the commencement of the insolvency proceedings, become a party to an arbitration agreement, and any matter to which the agreement is required to be determined in connection with, or for the bankruptcy proceedings,
 - (a) then, if the case is one to which sub-section (1) does not apply, any other party or the receiver may apply to the judicial authority having jurisdiction in the bankruptcy proceedings for an order directing that the matter in question shall be submitted to arbitration by the arbitration agreement; and
 - (b) the Bankruptcy Court may if it is of the opinion that, the matter ought to be determined by arbitration, make an order accordingly.

Explanation: In this section “Bankruptcy Act” means: “Bankruptcy Act” 1997 (Act No. X of 1997) and ‘Receiver” means the receiver as explained in clause (4) of section 2 of the Bankruptcy Act.

3. If the court is satisfied that an arbitral tribunal under the BAIARA Arbitration Rules is not a competent authority to try the dispute, then the Secretariat shall not initiate an arbitration under the Rules or shall terminate, if initiated prior to the decision of the court.

ARTICLE 46: Publication of a Text in Bengali

After the commencement of this Rule, for the higher interest and understanding of the migrant workers, the concerned stakeholders shall, by notification in the official Gazette of BMET, publish an authentic text in Bengali which shall be known as the Authentic Bengali Text of the BAIRA Arbitration Rules.

Provided that in the event of any conflict between this Rule and the Bengali text, the Bengali text shall prevail.

ARTICLE 47: Power of the Board to Make Rules

The Board, may, in consultation with the representatives of the stakeholders make or amend rules for carrying out the purposes of this Rule. The amendment shall be duly published in the official gazette of BMET and shall be circulated among the stakeholders.

APPENDIX I- Statutes of the Dispute Resolution Board for Migrant Workers Related Dispute

ARTICLE 1: Function

1. The function of the Dispute Resolution Board of the is to ensure the application of the Rules of Arbitration of BAIRA, and it has all the necessary powers for that purpose.
2. As an autonomous body, it carries out these functions in complete independence from the BAIRA and any other organizations and their organs.
3. Its members are independent from the concerned governmental and non-governmental organizations.

ARTICLE 2: Composition of the Board

The Board shall consist of a Chairman, Vice-Chairmen, and members (collectively designated as members). The number of the Board members shall be seven: two members will be selected from the organizations representing the interests of the migrant workers and two will be selected from the organizations representing the interests of the recruiters and rest of the members will be selected from organizations independent of the mentioned two groups. In its work, the Board is assisted by its Secretariat and the Expert Committee(s).

ARTICLE 3: Appointment

1. The Chairman is elected from the neutral members of the Board.
2. The two Vice-Chairmen, one from the migrant workers interest protecting group and the other from the recruiters' interest protecting group, shall assist Chairman in carrying his responsibilities.

3. First four persons from two groups will be nominated for carrying out their responsibilities as member of the Board and these four members together will elect the remaining neutral members of the Board.
4. The term of office of all members, including, for the purposes of this paragraph, the Chairman and Vice-Chairmen, is three years. If a member is no longer
5. in a position to exercise the member's functions. For electing the succeeding members of the Board, the procedure described in this appendix shall be followed mutatis mutandis. Upon the consent of the all the four non neutral members of the Board the duration of the term of office of any non-neutral member may be extended beyond three years.

ARTICLE 4: Plenary Session of the Board

The Plenary Sessions of the Board are presided over by the Chairman or, in the Chairman's absence, by one of the Vice-Chairmen designated by the Chairman. The deliberations shall be valid when at least three fourth members are present. Decisions are taken by a majority vote, the Chairman or Vice-Chairman, as the case may be, having a casting vote in the event of a tie.

ARTICLE 5: Expert Committees

The Board may set up one or more Expert Committees and establish the functions and organization of such Committees.

ARTICLE 6: Confidentiality

The work of the Board is of a confidential nature which must be respected by everyone who participates in that work in whatever capacity. The Board lays down the rules regarding the persons who can attend the meetings of the Board and its Committees and

who are entitled to have access to materials related to the work of the Board and its Secretariat.

ARTICLE 7: Modification of the Rules of Arbitration

Any proposal of the Board members or Secretariat or Expert Committee for a modification of the Rules is laid before the Board for approval.

ARTICLE 8: Model Clause

In the event of any dispute arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the BAIIRA by one or more arbitrators appointed in accordance with the said the rules. The commencement of proceedings under the BAIIRA Arbitration Rules shall not prevent any party from during the arbitration proceedings need to be informed and the arbitral tribunal shall allocate such alternatives according the BAIIRA Arbitration Rules.

APPENDIX II: Internal Rules of the Dispute Resolution Board

ARTICLE 1: Confidential Character of the Work of the Dispute Resolution Board

1. For the purposes of this Appendix, members of the Board include the Chairman and Vice-Chairmen of the Board.
2. The sessions of the Board, whether plenary or those of a Committee of the Board, are open only to its members and to the Secretariat.
3. However, in exceptional circumstances, the President of the Board may invite other persons to attend. Such persons must respect the confidential nature of the work of the Board.
4. The documents submitted to the Board or drawn up by it or the Secretariat in the course of the Board's proceedings, are communicated only to the members of the Board and to the Secretariat and to persons authorized by the Chairman to attend Board sessions.
5. The Chairman or the Secretary General of the Board may authorize researchers undertaking work of an academic nature to acquaint themselves with awards and other documents of general interest, with the exception of memoranda, notes, statements and documents remitted by the parties within the framework of arbitration proceedings.
6. Such authorization shall not be given unless the beneficiary has undertaken to respect the confidential character of the documents made available and to refrain from publishing anything based upon information contained therein without having previously submitted the text for approval to the Secretary General of the Board.
7. The Secretariat will in each case submitted to arbitration under the Rules retain in the archives of the Board all awards, Terms of Reference and decisions of the Board, as well as copies of the pertinent correspondence of the Secretariat.

8. Any documents, communications or correspondence submitted by the parties or the arbitrators may be destroyed unless a party or an arbitrator requests in writing within a period fixed by the Secretariat the return of such documents, communications or correspondence. All related costs and expenses for the return of those documents shall be paid by such party or arbitrator.

ARTICLE 2: Expert Committee

1. In accordance with the provisions of Article 3(4) of the Rules and Article 5 of Appendix I, the Board hereby establishes an Expert Committee of the Board.
2. The members of the Committee consist of a president and at least two other members. These members are experts and equipped with the knowledge related arbitration procedure.
3. The Chairman at the recommendation of the Board members appoint these experts. These members shall be compensated from the mutual or joint fund for their valuable services.
4. The Secretariat works as a bridge between the Board and the Expert Committee.
5. The Board shall determine the decisions that may be taken by the Committee.
 - (a) The decisions of the Committee are taken unanimously.
 - (b) When the Committee cannot reach a decision or deems it preferable to abstain, it transfers the case to the Board, making any suggestions it deems appropriate. The Committee's decisions are brought to the notice of the Board at the earliest possible time.
6. For the purpose of expedited procedures and in accordance with the provisions of Article 3(4) of the Rules and Article 5 of Appendix I, the Board may exceptionally establish a

Committee consisting of one member. Articles 4(2), 4(3), 4(5) subparagraphs (b) and (c) of this Appendix II shall not apply.

ARTICLE 3: Court Secretariat

1. In the Secretary General's absence or otherwise at the Secretary General's request, the Deputy Secretary General and/or the General Counsel shall have the authority to refer matters to the Board, confirm arbitrators, certify true copies of awards.
2. The Secretariat may, with the approval of the Board, issue notes and other documents for the information of the parties and the arbitrators, or as necessary for the proper conduct of the arbitral proceedings.
3. Offices of the Secretariat may be established outside the offices of BAIRA. Requests for Arbitration may be submitted to the Secretariat at any of its offices, and the Secretariat's functions under the Rules may be carried out from its offices, as instructed by the Secretary General, Deputy Secretary General or General Counsel.

APPENDIX III: Case Management Techniques

The following are examples of case management techniques that can be used by the arbitral tribunal and the parties for controlling time and cost. Appropriate control of time and cost is important in all cases. In cases of low complexity and low value, it is particularly important to ensure that time and costs are proportionate to what is at stake in the dispute.

- (a) Bifurcating the proceedings or rendering one or more partial awards on key issues, when doing so may genuinely be expected to result in a more efficient resolution of the case.
- (b) Identifying issues that can be resolved by agreement between the parties or their experts.
- (c) Identifying issues to be decided solely on the basis of documents rather than through oral evidence or legal argument at a hearing.
- (d) Production of documentary evidence:
 - i. requiring the parties to produce with their submissions the documents on which they rely;
 - ii. avoiding requests for document production when appropriate in order to control time and cost;
 - iii. in those cases where requests for document production are considered appropriate, limiting such requests to documents or categories of documents that are relevant and material to the outcome of the case;
 - iv. establishing reasonable time limits for the production of documents;
 - v. using a schedule of document production to facilitate the resolution of issues in relation to the production of documents.

- (e) Limiting the length and scope of written submissions and written and oral witness evidence (both fact witnesses and experts) so as to avoid repetition and maintain a focus on key issues.
- (f) Using telephone or video conferencing for procedural and other hearings where attendance in person is not essential and use of IT that enables online communication among the parties, the arbitral tribunal and the Secretariat.
- (g) Organizing a pre-hearing conference with the arbitral tribunal at which arrangements for a hearing can be discussed and agreed and the arbitral tribunal can indicate to the parties issues on which it would like the parties to focus at the hearing.
- (h) Settlement of disputes:
 - i. informing the parties that they are free to settle all or part of the dispute either by negotiation or through any form of amicable dispute resolution methods such as, mediation;
 - ii. where agreed between the parties and the arbitral tribunal, the arbitral tribunal may take steps to facilitate settlement of the dispute suspending the arbitration proceedings, provided that every effort is made to ensure that any subsequent award is enforceable at law.

APPENDIX IV: Emergency Arbitrator Rules

ARTICLE1: Application for Emergency Measures

1. A party wishing to have recourse to an emergency arbitrator pursuant to Article 30 of the Rules shall submit its Application for Emergency Measures (the “Application”) to the Secretariat.
2. The Application shall be supplied in a number of copies sufficient to provide one copy for each party, plus one for the emergency arbitrator, and one for the Secretariat.
3. The Application shall contain the following information:
 - (c) the name in full, description, address and other contact details of each of the parties;
 - (d) the name in full, address and other contact details of any person(s) representing the applicant;
 - (e) a description of the circumstances giving rise to the Application and of the underlying dispute referred or to be referred to arbitration;
 - (f) a statement of the Emergency Measures sought;
 - (g) the reasons why the applicant needs urgent interim or conservatory measures that cannot await the constitution of an arbitral tribunal;
 - (h) any relevant agreements and, in particular, the arbitration agreement;
 - (i) any agreement as to the place of the arbitration, the applicable rules of law or the language of the arbitration; and
 - (j) any Request for Arbitration and any other submissions in connection with the underlying dispute, which have been filed with the Secretariat by any of the

parties to the emergency arbitrator proceedings prior to the making of the Application.

The Application may contain such other documents or information as the applicant considers appropriate or as may contribute to the efficient examination of the Application.

4. The Application shall be drawn up in the language of the arbitration if agreed upon by the parties or, in the absence of any such agreement, in the language of the arbitration agreement.
5. If and to the extent that the Chairman of the Board (the “Chairman”) considers, on the basis of the information contained in the Application, that the Emergency Arbitrator Provisions apply with reference to Article 30(5) and Article 30(6) of the Rules, the Secretariat shall transmit a copy of the Application and the documents annexed thereto to the responding party. If and to the extent that the President considers otherwise, the Secretariat shall inform the parties that the emergency arbitrator proceedings shall not take place with respect to some or all of the parties and shall transmit a copy of the Application to them for information.
6. The Chairman shall terminate the emergency arbitrator proceedings if a Request for Arbitration has not been received by the Secretariat from the applicant within 10 days of the Secretariat’s receipt of the Application, unless the emergency arbitrator determines that a longer period of time is necessary.

ARTICLE 2: Appointment of the Emergency Arbitrator; Transmission of the File

1. The Chairman shall appoint an emergency arbitrator within a time as short as possible, normally within two days from the Secretariat’s receipt of the Application. The Chairman

may appoint Secretary General and in the absence of Secretary General, Deputy Secretary General as the emergency arbitrator if necessary.

2. No emergency arbitrator shall be appointed after the file has been transmitted to the arbitral tribunal pursuant to Article 18 of the Rules. An emergency arbitrator appointed prior thereto shall retain the power to make an order within the time limit permitted by Article 5(4) of this Appendix.
3. Once the emergency arbitrator has been appointed, the Secretariat shall so notify the parties and shall transmit the file to the emergency arbitrator. Thereafter, all written communications from the parties shall be submitted directly to the emergency arbitrator with a copy to the other party and the Secretariat. A copy of any written communications from the emergency arbitrator to the parties shall be submitted to the Secretariat.
4. Every emergency arbitrator shall be and remain impartial and independent of the parties involved in the dispute.
5. Before being appointed, a prospective emergency arbitrator shall sign a statement of acceptance, availability, impartiality and independence. The Secretariat shall provide a copy of such statement to the parties.
6. An emergency arbitrator shall not act as an arbitrator in any arbitration relating to the dispute that gave rise to the Application.

ARTICLE 3: Challenge of an Emergency Arbitrator

1. A challenge against the emergency arbitrator must be made within three days from receipt by the party making the challenge of the notification of the appointment or from the date when that party was informed of the facts and circumstances on which the challenge is based if such date is subsequent to the receipt of such notification.

2. The challenge shall be decided by the Board after the Secretariat has afforded an opportunity for the emergency arbitrator and the other party or parties to provide comments in writing within a suitable period of time.

ARTICLE 4: Place of the Emergency Arbitrator Proceedings

1. If the parties have agreed upon the place of the arbitration, such place shall be the place of the emergency arbitrator proceedings. In the absence of such agreement, the Chairman shall fix the place of the emergency arbitrator proceedings, without prejudice to the determination of the place of the arbitration pursuant to Article 19(1) of the Rules.
2. Any meetings with the emergency arbitrator may be conducted through a meeting in person at any location the emergency arbitrator considers appropriate or by videoconference, telephone or similar means of communication.

ARTICLE 5: Proceedings

1. The emergency arbitrator shall establish a procedural timetable for the emergency arbitrator proceedings within a time as short as possible, normally within two days from the transmission of the file to the emergency arbitrator pursuant to Article 2(3) of this Appendix.
2. The emergency arbitrator shall conduct the proceedings in the manner which the emergency arbitrator considers to be appropriate, taking into account the nature and the urgency of the Application. In all cases, the emergency arbitrator shall act fairly and impartially and ensure that each party has a reasonable opportunity to present its case.

ARTICLE 6: Order

1. Pursuant to Article 30(2) of the Rules, the emergency arbitrator's decision shall take the form of an order (the "Order").

2. In the Order, the emergency arbitrator shall determine whether the Application is admissible pursuant to Article 30(1) of the Rules and whether the emergency arbitrator has jurisdiction to order Emergency Measures.
3. The Order shall be made in writing and shall state the reasons upon which it is based. It shall be dated and signed by the emergency arbitrator.
4. The Order shall be made no later than 15 days from the date on which the file was transmitted to the emergency arbitrator pursuant to Article 2(3) of this Appendix. The Chairman may extend the time limit pursuant to a reasoned request from the emergency arbitrator or on the President's own initiative if the Chairman decides it is necessary to do so.
5. Within the time limit established pursuant to Article 5(4) of this Appendix, the emergency arbitrator shall send the Order to the parties, with a copy to the Secretariat, by any of the means of communication permitted by Article 4(2) of the Rules that the emergency arbitrator considers will ensure prompt receipt
6. The Order shall cease to be binding on the parties upon:
 - a) the Chairman's termination of the emergency arbitrator proceedings pursuant to Article 1(6) of this Appendix;
 - b) the acceptance by the Court of a challenge against the emergency arbitrator pursuant to Article 3 of this Appendix;
 - c) the arbitral tribunal's final award, unless the arbitral tribunal expressly decides otherwise; or
 - d) the withdrawal of all claims or the termination of the arbitration before the rendering of a final award.

7. The emergency arbitrator may make the Order subject to such conditions as the emergency arbitrator thinks fit, including requiring the provision of appropriate security.
8. Upon a reasoned request by a party made prior to the transmission of the file to the arbitral tribunal pursuant to Article 18 of the Rules, the emergency arbitrator may modify, terminate or annul the Order.

ARTICLE 7: General Rule

1. The Chairman shall have the power to decide, at the Chairman's discretion, all matters relating to the administration of the emergency arbitrator proceedings not expressly provided for in this Appendix.
2. In the Chairman's absence or otherwise at the Chairman's request, any of the Vice-Chairmen of the Board shall have the power to take decisions on behalf of the Chairman.
3. In all matters concerning emergency arbitrator proceedings not expressly provided for in this Appendix, the Board, the Chairman and the emergency arbitrator shall act in the spirit of the Rules and this Appendix.

APPENDIX V: Expedited Procedure Rules

ARTICLE 1: Application of the Expedited Procedure Rules

1. Insofar as Article 31 of the Rules of Arbitration of the BAIRA (the “Rules”) and this Appendix V do not provide otherwise, the Rules shall apply to an arbitration under the Expedited Procedure Rules.
2. The amount referred to in Article 31(2), subparagraph a), of the Rules is BDT. 5,00,000.00.
3. Upon receipt of the Answer to the Request pursuant to Article 5 of the Rules, or upon expiry of the time limit for the Answer or at any relevant time thereafter and subject to Article 31(3) of the Rules, the Secretariat will inform the parties that the Expedited Procedure Provisions shall apply in the case.
4. The Board may, at any time during the arbitral proceedings, on its own motion or upon the request of a party, and after consultation with the arbitral tribunal and the parties, decide that the Expedited Procedure Provisions shall no longer apply to the case. In such case, unless the Board considers that it is appropriate to replace and/or reconstitute the arbitral tribunal, the arbitral tribunal shall remain in place.

ARTICLE 2: Constitution of the Arbitral Tribunal

1. The Board may, notwithstanding any contrary provision of the arbitration agreement, appoint a sole arbitrator.
2. The parties may nominate the sole arbitrator within a time limit to be fixed by the Secretariat from the arbitrators’ panel fixed by the Board. In the absence of such nomination, the sole arbitrator shall be appointed by the Board within as short a time as possible.

ARTICLE 3: Proceedings

1. Article 24 of the Rules shall not apply to an arbitration under the Expedited Procedure Rules.
2. After the arbitral tribunal has been constituted, no party shall make new claims, unless it has been authorized to do so by the arbitral tribunal, which shall consider the nature of such new claims, the stage of the arbitration, any cost implications and any other relevant circumstances.
3. The case management conference convened pursuant to Article 25 of the Rules shall take place no later than 15 days after the date on which the file was transmitted to the arbitral tribunal. The Board may extend this time limit pursuant to a reasoned request from the arbitral tribunal or on its own initiative if it decides it is necessary to do so.
4. The arbitral tribunal shall have discretion to adopt such procedural measures as it considers appropriate. In particular, the arbitral tribunal may, after consultation with the parties, decide not to allow requests for document production or to limit the number, length and scope of written submissions and written witness evidence (both fact witnesses and experts).
5. The arbitral tribunal may, after consulting the parties, decide the dispute solely on the basis of the documents submitted by the parties, with no hearing and no examination of witnesses or experts. When a hearing is to be held, the arbitral tribunal may conduct it by videoconference, telephone or similar means of communication.

ARTICLE 4: Award

- 1** The time limit within which the arbitral tribunal must render its final award is six months from the date of the case management conference. The Board may extend the time limit pursuant to Article 38(1) of the Rules.
- 2** The fees of the arbitral tribunal shall be fixed according to the scales of administrative expenses and arbitrator's fees for the expedited procedure.

ARTICLE 5: General Rule

In all matters concerning the expedited procedure not expressly provided for in this Appendix, the Board and the arbitral tribunal shall act in the spirit of the Rules and this Appendix.