



COURT OF ARBITRATION  
**LEWIATAN**

# **RULES**

**of the Lewiatan Court  
of Arbitration**

As in force from 1<sup>st</sup> March 2012

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## MODEL ARBITRATION CLAUSE

The following arbitration clause is recommended:

“Any dispute arising out of or related to this contract shall be finally settled by the arbitral tribunal at the Lewiatan Court of Arbitration in Warsaw in accordance with the Rules of that Court in effect on the date of commencement of proceedings.”

The following provisions may be added to the arbitration clause:

„The place of arbitration shall be [•].” \*

„The language of arbitration shall be [•]”

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\* If the place of arbitration is to be other than Warsaw.

Lewiatan Court of Arbitration

Zbyszka Cybulskiego Str. 3, 00-727 Warsaw

tel.: (+48 22) 55 99 970

e-mail: [sadarbitrazowy@konfederacjalewiatan.pl](mailto:sadarbitrazowy@konfederacjalewiatan.pl)

[www.sadarbitrazowy.org.pl](http://www.sadarbitrazowy.org.pl)



# **RULES**

**of the Lewiatan Court  
of Arbitration**

**As in force from 1<sup>st</sup> March 2012  
with amendments in force since  
23<sup>rd</sup> March 2015 and 8<sup>th</sup> May 2017**

**UNIFORM TEXT**

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## MODEL ARBITRATION CLAUSE

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“Any dispute arising out of or related to this contract shall be finally settled by the arbitral tribunal at the Lewiatan Court of Arbitration in Warsaw in accordance with the Rules of that Court in effect on the date of commencement of proceedings.”

The following provisions may be added to the arbitration clause:

„The place of arbitration shall be [•].” \*

„The language of arbitration shall be [•]”

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\* If the place of arbitration is to be other than Warsaw.

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# GENERAL PROVISIONS

## § 1 THE LEWIATAN COURT OF ARBITRATION

1. The Court of Arbitration at the Polish Confederation Lewiatan (hereinafter also referred to as the “Court” or the “Lewiatan Court”) is a permanent court of arbitration. The seat of the Lewiatan Court is in Warsaw.
2. The Lewiatan Court is an autonomous, independent and separate organisational entity of the Polish Confederation Lewiatan. The organisational structure of the Lewiatan Court is set out in detail in Appendix I to the Rules.
3. The Lewiatan Court administers arbitral proceedings conducted under the Rules of the Court of Arbitration at Polish Confederation Lewiatan (the “Rules”) and settled by arbitral tribunals appointed in accordance with the Rules.
4. The Lewiatan Court may administer *ad hoc* arbitral proceedings if the parties so decide.
5. In consideration of its services, the Lewiatan Court charges fees pursuant to the terms set out in the Tariff of Fees in effect on the date of commencement of proceedings.

## § 2 JURISDICTION AND RULES OF THE LEWIATAN COURT

1. The Lewiatan Court has jurisdiction if the parties referred disputes which arose or may arise in the future out of a specific legal relationship to this Court, or to an arbitral tribunal appointed in accordance with the Rules, for resolution.
2. If the Lewiatan Court has jurisdiction, the dispute shall be settled by the arbitral tribunal in accordance with the Rules in effect on the date the statement of claim is filed, unless the parties agree otherwise. The parties to an arbitration agreement concluded prior to 1 March 2012 shall be bound by the Rules in effect on the date of conclusion of that agreement, unless they decide otherwise.

3. The arbitral tribunal shall mean a sole arbitrator or all arbitrators appointed to hear and settle a specific dispute (the “arbitral tribunal”).
4. In the event of any discrepancy between the provisions of the Rules in various language versions, the Polish version of the Rules shall prevail, unless the parties decide otherwise.
5. In matters not expressly provided for in the Rules, the Lewiatan Court, the arbitral tribunal and the parties shall act in the spirit of the Rules, seeking to ensure the broadest possible effectiveness of the arbitration agreement, the expeditiousness and efficiency of arbitral proceedings as well as the enforceability of awards.
6. At the Arbitral Tribunal’s request, the President of the Lewiatan Court shall issue the interpretation of a provision of the Rules in a given case after consulting members of the Arbitration Committee.

### **§3 DELIVERY OF WRITTEN COMMUNICATIONS AND THE RUNNING OF TIME LIMITS**

1. Any written communications, including requests, submissions or correspondence from or to the Lewiatan Court or the arbitral tribunal, should be delivered in person or by registered mail or courier, by electronic mail or by other means of telecommunication that provides a record of the transmission thereof. Arbitral Tribunal shall deliver by the registered letter with advice of delivery: original copy of a judgement, Procedural Order, final judgement of the arbitral proceeding and order of the court regarding jurisdiction.
2. Unless the parties decide otherwise, deliveries shall be made in person to an entity participating in the proceedings or to the postal or electronic address designated by it, and if no address is designated – by registered mail or by courier to the last-known address of its habitual residence or seat.
3. If the parties appointed legal representatives, deliveries shall be made to the address of these representatives.
4. A communication shall be deemed to have been delivered the day the addressee received it or the day it was sent, except for deliveries made by mail or courier, to the addressee in accord-



ance with Sections 1-3. A communication shall be deemed to have been effectively delivered to the last mailing address designated by the entity participating in the proceedings.

5. The time limits provided for in the Rules begin to run on the day following the day the communication was delivered in accordance with Section 4. If, at the place of delivery, the last day of the time limit is a non-business day, the time limit expires upon the end of the first business day following the non-business day.

#### **§4 CONFIDENTIALITY**

1. The Lewiatan Court and Polish Confederation Lewiatan, including the governing bodies and employees thereof as well as the arbitrators, the parties and all other arbitration participants are obliged to keep confidential the very fact of arbitration being conducted, the award, the orders and all documents filed or disclosed in the arbitration, as well as all information which they obtained in connection with the arbitration, unless the parties decide otherwise, disclosure of information is a statutory duty or serves to protect or pursue rights, in particular to recognise, enforce or bring an action to set aside the award in proceedings before a state court.
2. Publication of the award by the Lewiatan Court is admissible on condition of anonymity. The parties may, within 14 days following delivery of the award, object to the publication thereof. The absence of an objection in the period of time stated above shall be deemed as consent to the publication of the award.

#### **§5 EXPEDITED PROCEDURE**

1. A dispute shall be settled in expedited proceedings if the amount in dispute does not exceed PLN 50 000, unless the parties agree otherwise, in particular by deciding that the dispute is to be settled by an arbitral tribunal composed of three arbitrators.
2. The parties may decide, no later than the filing of the statement of defence, that the dispute shall be settled in expedited proceedings even if the amount in dispute exceeds PLN 50 000.

3. The dispute shall be heard and settled in expedited proceedings by an arbitral tribunal consisting of a sole arbitrator, under Appendix III hereto.

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## ARBITRAL TRIBUNAL

### § 6 NUMBER OF ARBITRATORS AND THE MANNER OF APPOINTMENT

1. Unless the parties agree otherwise, the number of arbitrators or the manner of appointment thereof shall be determined in accordance with the provisions below.
2. Subject to the expedited procedure, the dispute shall be settled by an arbitral tribunal composed of three arbitrators, unless the parties decide otherwise.
3. If the dispute is to be settled by three arbitrators, the claimant and the respondent shall appoint one arbitrator each. If either party fails to appoint an arbitrator in accordance with §16 Section 2 Point f in conjunction with §17 Section 1 and §18 Section 2 Point c, or Parties waived the right to appoint the arbitrator in its submission, the arbitrator shall be nominated by the Nominating Committee. The presiding arbitrator shall be chosen by the party-appointed arbitrators. If no presiding arbitrator is appointed within 14 days following the notice to the second arbitrator of the appointment thereof, the presiding arbitrator shall be nominated by the Nominating Committee. In justifiable cases, the Secretary-General may extend the time limit for appointing the presiding arbitrator.
4. If the dispute is to be settled by a sole arbitrator, and the parties have not appointed the sole arbitrator within 7 days following the filing of a statement of defence, the sole arbitrator shall be nominated by the Nominating Committee. In justifiable cases, the Secretary-General may extend the time limit for appointing the sole arbitrator.
5. If the parties or the party-appointed arbitrators fail to appoint the sole arbitrator or the presiding arbitrator within the time limit stipulated in Sections 3-4, the Nominating Committee shall nominate them in the following manner:

- a. The Nominating Committee shall provide the parties or the arbitrators, bearing in mind Section 6, with a list of five candidates in alphabetical order.
  - b. Each party or each arbitrator shall be entitled to delete no more than 2 candidates to whom they object. The parties or the arbitrators may submit the names of the undeleted candidates in their order of preference.
  - c. The parties or the arbitrators should return the list of candidates to the Nominating Committee within 7 days following receipt thereof. If a party or an arbitrator fails to return the list in this period of time, they shall be presumed to have consented to all candidates.
  - d. The candidate who has not been deleted by any party or any arbitrator shall be nominated as the sole arbitrator or the presiding arbitrator.
  - e. If more than one candidate is undeleted, the Nominating Committee shall choose the sole arbitrator or the presiding arbitrator from among the undeleted candidates, taking into consideration the preferences of the parties or the arbitrators.
6. In making a decision on the nomination of an arbitrator, the Nominating Committee shall take into consideration, in particular: (i) the nature of the dispute; (ii) experience in conducting arbitral proceedings; (iii) the substantive law applicable to resolution of the dispute; (iv) the place and language of arbitration; and (v) the citizenship, the habitual residence and other connections of the arbitrator with the countries of which the parties or the other arbitrators are citizens; (vi) the availability of the arbitrator.
  7. In the Rules, “Citizenship” shall mean the affiliation of an individual with a state, defined in accordance with the laws thereof and the location of the seat of a legal person or other organisational entity which, though devoid of legal personality, was granted legal capacity by statute.

## **§7 MULTIPLE PARTIES**

1. Where there are multiple parties as claimant or as respondent, and where the dispute is to be settled by three arbitrators, the multiple parties shall jointly, whether as claimant or respondent, appoint an arbitrator. If any party fails to appoint

the arbitrator, the Nominating Committee shall nominate the arbitrator for that party in accordance with § 6 Section 3.

2. If the dispute is to be settled by a sole arbitrator, the multiple parties shall jointly, whether as claimant or respondent, appoint the sole arbitrator. If the parties fail to appoint a sole arbitrator, the sole arbitrator shall be nominated by the Nominating Committee in accordance with § 6 Section 4.

## **§8 QUALIFICATIONS OF ARBITRATORS**

1. An arbitrator is, and shall remain throughout the entire arbitration, impartial and independent and shall observe the principles of ethics approved by the Arbitration Committee. In assessing the independence and impartiality of an arbitrator, the IBA Guidelines on Conflicts of Interest in International Arbitration shall apply as the minimum standard.
2. A person in relation to whom doubts exist as to his or her independence or impartiality or a person who lacks the qualifications specified in the arbitration agreement by the parties may not accept his or her appointment as an arbitrator.
3. When a person is approached in connection with his or her possible appointment as an arbitrator, he or she should immediately disclose to the person who approached him or her any circumstances likely to give rise to doubts as to his or her impartiality or independence or the fact that he or she lacks the qualifications specified by the parties in the arbitration agreement.
4. When a person is approached in connection with his or her possible appointment as an arbitrator, he or she shall immediately submit the Statement of Impartiality and Independence to the Secretariat of the Lewiatan Court, in accordance with the sample form presented in Appendix IV, in which the person in question shall declare that he or she is independent and impartial and shall disclose any circumstances likely to give rise to doubts as to his or her impartiality or independence. The Secretariat shall send a copy of the Statement to the parties and to the other arbitrators.
5. During the course of arbitration, the arbitrator should immediately inform the parties, the other arbitrators and the Secretary-General of the Lewiatan Court of any circumstances

that have occurred which are likely to give rise to doubts as to his or her impartiality or independence or of the loss of the qualifications required from an arbitrator, as specified in the arbitration agreement.

6. If the parties to arbitration are citizens of different states, the sole arbitrator or the presiding arbitrator should be a citizen of a state other than the states of which the parties are citizens, unless the parties or the other arbitrators, after consultation with the parties, decide otherwise. If it is indispensable for the further course of arbitration, the sole arbitrator or the presiding arbitrator may come from the country of which one of the parties is a citizen.

## **§9 LIST OF RECOMMENDED ARBITRATORS**

1. The Lewiatan Court keeps a “List of recommended arbitrators.”
2. Arbitrators, including the sole arbitrator and the presiding arbitrator, may be appointed from outside of the List of recommended arbitrators.
3. Anyone with full capacity for legal acts may apply for inclusion on the List of recommended arbitrators. A one-off fixed fee, set by the President of the Court, is charged for such inclusion. A decision on inclusion and removal from the List of recommended arbitrators is made by the Arbitration Committee. In making a decision as to inclusion on the List, the Arbitration Committee shall take into consideration: (i) experience in conducting arbitral proceedings or other ADR methods; (ii) the occupation, (iii) publications, including those on arbitration. A decision to deny inclusion on the List of recommended arbitrators shall be made without a justification. A new request for inclusion on the List of recommended arbitrators is admissible after 6 months pass from the negative decision.
4. Any arbitrator included on the List of recommended arbitrators is obliged to extend his or her professional education by attending at least one conference or training course annually in the scope of arbitration. If an arbitrator twice defaults on the duty to extend his or her professional education, he or she may be removed from the List of recommended arbitrators.

5. “The List of recommended arbitrators” constitutes the list of arbitrators referred to in the previous versions of the Rules of the Lewiatan Court.
6. “The List of recommended arbitrators” shall be updated once every year.

## **§10 CHALLENGE OF AN ARBITRATOR**

1. An arbitrator may be disqualified at the request of any party if circumstances exist that give rise to justifiable doubts as to the arbitrator’s impartiality or independence or if he or she does not possess the required qualifications, as agreed by the parties.
2. A party may challenge an arbitrator within 14 days after the circumstances referred to in Section 1 have become known to it. The party which appointed the arbitrator may only challenge him or her due to reasons which became known to it after the appointment – however, no later than 14 days after they have become known to it.
3. The notice of challenge should state the reasons for the challenge and shall be filed with the Lewiatan Court. A copy of the notice of challenge shall be delivered by the Secretary-General to the opposing party, the challenged arbitrator and the other arbitrators. The aforementioned persons may respond to the notice of challenge in writing within 7 days following delivery thereof.
4. If the arbitrator does not resign within 7 days of taking delivery of a copy of the notice of challenge, the challenge shall be decided by the Nominating Committee within 30 days following the filing of the notice.
5. The Nominating Committee shall make a decision on the challenge in the form of an order, stating in brief the reasons upon which the decision is based. The Nominating Committee may fix the costs of proceedings relating to the challenge and determine by whom, and to what extent, they shall be borne.
6. The filing of a notice of challenge shall not affect the course of arbitration, including the issuance of the award, unless the arbitral tribunal decides otherwise.

## **§11 REPLACEMENT OF AN ARBITRATOR**

1. The parties may at any time replace any arbitrator by filing joint statements in writing with the President of the Court.
2. At the request of a party or the other arbitrators or the Secretary-General, the Nominating Committee may decide to replace an arbitrator if:
  - a. the arbitrator repeatedly defaults on his or her duties or, in particular, performs them after a substantial delay without good cause; or
  - b. there is a justifiable concern that the arbitrator will be unable to perform his or her duties on time.
3. §10 Section 3-6 of the Rules shall apply mutatis mutandis.

## **§12 RESIGNATION OF AN ARBITRATOR**

An arbitrator may resign at any time due to important reasons. An arbitrator resigns by filing a written statement on his or her resignation with the President of the Court, the other arbitrators and the parties. The arbitrator is obliged to state the reasons for his or her resignation. If the arbitrator did not resign due to important reasons, he or she shall not be entitled to receive the fee.

## **§13 EFFECTS OF EARLY EXPIRY OF AN ARBITRATOR'S MANDATE**

1. If an arbitrator dies, is disqualified, replaced or resigns, a substitute arbitrator shall be appointed in accordance with the nomination procedure set forth in § 6-9 of the Rules, on the basis of which the arbitrator to be replaced was appointed.
2. If an arbitrator twice resigns or is replaced, a substitute arbitrator shall be nominated by the Nominating Committee within 10 days following the arbitrator's resignation or replacement.
3. If the presiding arbitrator's or the sole arbitrator's mandate expires, a substitute sole arbitrator or a substitute presiding arbitrator may, on his or her own initiative or at the request of a party made in writing no later than 7 days after the appointment of a substitute presiding arbitrator or a substitute sole arbitrator has become known to the party, order that prior meetings or inspections be repeated. In

other cases of appointment of a substitute arbitrator, the actions hitherto taken in the course of arbitration may be repeated if the majority of members of the arbitral tribunal so decides.

#### **§14 CONTINUATION OF PROCEEDINGS BY THE MAJORITY OF THE ARBITRAL TRIBUNAL**

If, after the issuance of an order to close the evidentiary proceedings, an arbitrator dies, resigns, is disqualified or refuses to perform his or her duties or de facto does not perform them or performs them after substantial delay, the other arbitrators may, with the written consent of the President of the Lewiatan Court and after filing a written notice with the third arbitrator and the parties, continue the arbitration and issue the award.

#### **§15 LIMITATION OF LIABILITY**

Save for intentional wrongdoing, the Lewiatan Court, including its governing bodies and employees, Polish Confederation Lewiatan and arbitrators shall bear no liability for acts or omissions in connection with arbitral proceedings.

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## **COMMENCEMENT OF ARBITRATION**

#### **§16 STATEMENT OF CLAIM**

1. Arbitration shall be commenced upon the filing of a statement of claim with the Lewiatan Court.
2. The statement of claim should include the following particulars:
  - a. the names of the parties, including their addresses, telephone numbers and email addresses, provided that such information is known to the claimant;
  - b. the name of the legal representative, including his or her mailing address, if the party has appointed a legal representative, phone numbers and e-mail addresses;



- c. a statement of the relief sought with an exact description of claims, including all factual and legal grounds for them;
  - d. an arbitration agreement or other grounds for the jurisdiction of the Lewiatan Court;
  - e. the amount in dispute;
  - f. the name of the party-appointed arbitrator, including his or her address and phone numbers – if it is known to the Claimant – e-mail addresses, if the arbitral tribunal is composed of three arbitrators and unless the parties decide otherwise.
3. The statement of claim should be accompanied by the following documents:
- a. a copy of the arbitration agreement or a copy of the underlying contract or other document out of or in relation to which the dispute arises;
  - b. copies of the statement of claim, including appendices, for each arbitrator, the respondent and the Secretariat of the Lewiatan Court;
  - c. the original or certified copy of the power of attorney if legal representatives have been appointed.
4. The statement of claim should be accompanied by the evidence relied on by the claimant.
5. After the statement of claim is filed, the Secretary-General requests that the claimant pay the fee for the statement of claim in a stipulated period of time, in accordance with §49 Section 1.

## **§17 FORMAL DEFECTS IN A STATEMENT OF CLAIM**

- 1. If the statement of claim fails to meet the formal requirements set forth in §16 Sections 2 and 3 or was not duly paid for, the Secretary-General shall request that the claimant pay the required fee or cure defects in a stipulated period of time, not shorter than 7 days, failing which the statement of claim shall be returned. If the stipulated period of time lapses to no effect, the statement of claim shall be returned, subject to §6 Section 3. The returned statement of claim shall produce no legal effects.
- 2. If the statement of claim was duly paid for and no formal defects exist, the Secretary-General shall immediately deliver a copy thereof to the respondent and shall request that the

respondent file a statement of defence within 21 days following receipt of the request. In justifiable cases, the Secretary-General may extend the time limit for filing a statement of defence.

## **§18 STATEMENT OF DEFENCE**

1. Within the time limit set forth in §17 Section 2, the respondent shall deliver the statement of defence to the claimant and the Lewiatan Court, including copies thereof for each arbitrator.
2. The Statement of Defence should include the following particulars:
  - a. the names of the parties, including their addresses, telephone numbers and email addresses, provided that such information is known to the respondent;
  - b. the name of the legal representative, including the mailing address thereof, phone numbers and e-mail addresses, if the party has appointed a legal representative;
  - c. the name of the party-appointed arbitrator, including his or her address phone numbers – if it is known to the Claimant – e-mail addresses, if the arbitral tribunal is composed of three arbitrators and unless the parties decide otherwise;
  - d. submission on the jurisdiction of the Lewiatan Court;
  - e. a reply to the relief sought by the claimant, along with all factual and legal grounds.
3. The statement of defence should be accompanied by the evidence relied on by the respondent and the original or certified copy of the power of attorney if legal representatives have been appointed.
4. Failure to file a statement of defence in accordance with Section 1 shall not stop the proceedings.

## **§19 COUNTERCLAIM**

1. The respondent may file a counterclaim together with a statement of defence, at the latest, provided that the Lewiatan Court has jurisdiction to hear its claim. The provisions on a statement of claim shall apply to the counterclaim *mutatis mutandis*.

2. Within 21 days following delivery of a counterclaim, the claimant should file a reply to the counterclaim. The provisions on a statement of defence shall apply to the reply to the counterclaim *mutatis mutandis*.
3. A set-off may be pleaded, at the latest, together with a statement of defence or the reply to a counterclaim.
4. In justifiable cases, the arbitral tribunal may hear a counterclaim or a set-off plea raised after the time limit set forth in Sections 1 and 3, and extend the time limit for filing the reply to a counterclaim.

## **§20 JOINDER**

1. A party may submit a request to join an additional party to the proceedings – no later, however, than the issuance of the Procedural Order and provided that such an additional party is a party to the arbitration agreement binding on the parties. If an arbitrator was effectively appointed by the party which the additional party is to join, the joinder is only admissible if the additional party approves the appointed arbitrator.
2. Arbitration shall be deemed to have commenced with respect to the additional party upon the filing of a request with the Lewiatan Court for an additional party to be joined. §16-17 of the Rules shall apply to the request *mutatis mutandis*.
3. The Secretary-General shall deliver the request to the additional party and shall set 21 days to file a reply to the request. §18-19 of the Rules shall apply *mutatis mutandis*.
4. The arbitral tribunal shall decide whether the request for an additional party to be joined is admissible.

## **§21 THIRD-PARTY INTERVENTION**

1. If the outcome of the case may affect the legal situation between one of the parties and a third party, a party to the arbitration may, no later than the issuance of a Procedural Order, submit a request for that third party to be joined to the arbitration as a third-party intervenor.

2. The request should be made in the form of a written submission which demonstrates a legal interest that a third party has in joining the arbitration and identifies the party which that third party is to join. The request should be accompanied by copies for the arbitrators, the opposing party and the third party.
3. The Secretary-General shall request that the third party state within a stipulated period of time whether it will join the pending arbitration as a third-party intervenor.
4. The arbitral tribunal shall decide whether the third party should be admitted to the arbitration as a third-party intervenor. Each party to the arbitration may be joined by more than one intervenor. The third-party intervenor shall receive copies of all written submissions filed by the parties and shall be entitled to file statements and explanations, as well as written submissions, without becoming a party to the arbitration.

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## PROCEEDINGS BEFORE THE ARBITRAL TRIBUNAL

### §22 GENERAL PRINCIPLES

1. The parties may agree the conduct of the proceedings before the arbitral tribunal.
2. Unless the parties agree otherwise, the arbitral tribunal shall conduct proceedings in accordance with the Rules and in such manner as it considers appropriate, provided that the parties should be treated with equality and each party is given an opportunity to present its case.
3. The parties undertake to carry out the orders and other rulings of the arbitral tribunal.
4. The arbitral tribunal and the parties are obliged to conduct the arbitration in an expeditious and cost-effective manner.
5. Copies of all communications, including written submissions, requests and letters to the arbitral tribunal, should be delivered in accordance with §3 of the Rules to the other parties, the third-party intervenor, the arbitrators and the Lewiatan Court.

## **§23 PLACE OF ARBITRATION**

1. If the parties do not agree otherwise, the place of arbitration shall be presumed to be in Warsaw, unless the arbitral tribunal considers, bearing in mind all the circumstances of the case and the positions of the parties, that a different venue is more appropriate.
2. Unless the parties agree to the contrary, the arbitral tribunal may, regardless of the agreed place of arbitration, hold meetings, hearings and deliberations in any such place as it considers appropriate.

## **§24 LANGUAGE**

1. The parties may agree the language of arbitration. Failing such agreement, the arbitral tribunal shall choose the language of arbitration, taking primarily into consideration the language of the underlying contract out of or in relation to which the dispute arises and the positions of the parties.
2. If any document was not prepared in the language of arbitration, the arbitral tribunal may request that a party submit the translation of the document into the language of arbitration in the form determined by the arbitral tribunal.
3. If the language of arbitration is other than Polish, English or Russian, the statement of claim, the statement of defence and the correspondence addressed to the Lewiatan Court should be accompanied by the translations thereof into one of these languages.

## **§25 LEGAL REPRESENTATION**

A party may be represented by a legal representative. Any person with full capacity for legal acts may be a legal representative.

## **§26 PRELIMINARY MEETING; PROCEDURAL ORDER**

1. As soon as it is constituted, the arbitral tribunal shall order a preliminary meeting with the participation of the parties in order to agree an efficient and cost-effective manner of con-

duct of arbitration satisfying the expectations of the parties, unless it considers the said meeting unnecessary. A preliminary meeting may be held by means of telecommunication or other appropriate means.

2. As soon as it is constituted, the arbitral tribunal shall, after consultation with the parties, draw up a procedural order consisting of (i) the timetable of the arbitration and, if the arbitral tribunal considers it appropriate, (ii) the rules governing the conduct of the arbitration (the “Procedural Order”).
3. The timetable of the arbitration should include the following particulars:
  - a. the time limits for filing further written submissions;
  - b. the time limit for the parties to present witnesses or expert witnesses and specify the circumstances intended to be proved;
  - c. the time limit for the parties to submit the written testimony of witnesses, unless the arbitral tribunal considers that the witnesses shall only give oral testimony at a hearing;
  - d. the deadline for presenting new allegations and evidence;
  - e. the time limit for the parties to file pre-hearing briefs if the arbitral tribunal considers them helpful to resolution of the case;
  - f. the date of a hearing and the manner of conducting it;
  - g. the time limit for filing post-hearing briefs if the arbitral tribunal considers them helpful to resolution of the case;
  - h. the time limit for closing the evidentiary proceedings;
  - i. the time limit for issuing the award, unless, due to the nature of the dispute, the arbitral tribunal considers the aforementioned elements unnecessary.
4. The rules governing the conduct of the arbitration include the following particulars:
  - a. the names and addresses of the parties;
  - b. a brief summary of the parties’ claims, including the sums claimed by the parties;
  - c. the key disputed issues which must be clarified in order for the dispute to be settled, unless the arbitral tribunal considers this unnecessary;
  - d. the full names of the arbitrators;
  - e. the place and language of arbitration;
  - f. the grounds for resolution of the dispute by the arbitral tribunal;

- g. a statement that the parties are obliged to observe the timetable of the arbitration and that the written submissions of the parties which are not included in the timetable of the arbitration shall be disregarded, unless the arbitral tribunal considers that there was good cause for filing such submissions;
  - h. a statement on whether the parties intend to call any witnesses and, if so, the number of witnesses. Moreover, a statement on whether the parties intend to submit witness testimony in writing;
  - i. a statement on whether the parties intend to call their own expert witnesses;
  - j. a statement that submission by the parties of new allegations or evidence after the final deadline shall be inadmissible, unless the arbitral tribunal considers that earlier submission was impossible or that the need for submission arose later.
5. If any party fails to meet the deadlines set in the Procedural Order without any justification, the arbitral tribunal may continue the proceedings and issue the award.
  6. After consultation with the parties, the arbitral tribunal may amend the Procedural Order in justifiable circumstances.

## **§27 RULING ON THE JURISDICTION OF THE LEWIATAN COURT**

1. The arbitral tribunal rules on the jurisdiction of the Lewiatan Court, including the existence, validity, effectiveness and scope of the arbitration agreement. The invalidity or expiry of the underlying contract in which the arbitration agreement was included shall not mean, in and of itself, the invalidity or expiry of the arbitration agreement.
2. A party should raise a plea that the Lewiatan Court lacks jurisdiction in a statement of defence or in the reply to a counterclaim. A party is not precluded from raising such a plea by the fact that it has appointed, or participated in the appointment of, an arbitrator. A plea that the claim brought by the other party in the course of proceedings exceeds the scope of the arbitration agreement should be raised immediately after such a claim is brought. The arbitral tribunal may hear a plea

raised at a later date if it considers the delay in the plea being raised justified.

3. Referral of the existence, validity or scope of the arbitration agreement to a state court for its assessment in any court proceedings shall not stop the arbitration.
4. The arbitral tribunal should rule on the jurisdiction of the Lewiatan Court before the ruling on the merits of the case. Where the decision on jurisdiction requires resolution of the case on the merits, the arbitral tribunal shall terminate the proceedings if it decides that it has no jurisdiction.

## **§28 CONSOLIDATION**

1. If an arbitration is commenced concerning a legal relationship in respect of which an arbitration between the same parties is already pending under the Rules, the President of the Court may, at the request of a party, decide to consolidate the new arbitration with the pending one.
2. President of the Court shall make such a decision after consulting the parties and the arbitral tribunal constituted in the arbitration commenced earlier.
3. Consolidation of arbitrations shall be inadmissible after the constitution of the arbitral tribunal in the proceedings commenced later, unless the arbitral tribunals are composed of the same arbitrators in both cases.

## **§29 AMENDING AND WITHDRAWING THE CLAIM**

1. A party may withdraw its statement of claim or counterclaim before the time the arbitral tribunal is constituted. In such case, the President of the Lewiatan Court shall terminate the proceedings.
2. Following the issuance of the Procedural Order, the parties may not amend their claims, unless the arbitral tribunal considers it admissible, bearing in mind the current status of proceedings, the interest of the parties or other circumstances. The arbitral tribunal's decision shall take the form of an order.



3. Following the constitution of the arbitral tribunal, a party may withdraw its claim, unless the arbitral tribunal considers it inadmissible due to the interest of the other party in obtaining a decision or due to other circumstances. The arbitral tribunal's decision shall take the form of an order.

### **§30 FURTHER SUBMISSIONS**

The arbitral tribunal shall determine in the Procedural Order whether the parties may file further submissions on the merits. Any submissions not included in the Procedural Order shall be disregarded, unless the arbitral tribunal considers that there was good cause for such a submission to be filed. In such case, the arbitral tribunal should simultaneously state whether, given the principle of equal treatment of parties, the other party is entitled to respond to the new submission.

### **§31 EVIDENCE**

1. Each party shall have the burden of proving the facts relied on to support its claim or defence.
2. The arbitral tribunal shall, at its sole discretion, determine the admissibility of evidence and assess the reliability and weight thereof.
3. The arbitral tribunal may require that the parties produce documents or other evidence which may be relevant to resolution of the dispute within such a period of time as it shall determine. The arbitral tribunal shall determine how to interpret the refusal of a party to present a specific piece of evidence. In deciding requests to require the other party to present documents, the arbitral tribunal should bear in mind the IBA Rules on the Taking of Evidence in International Arbitration.

### **§32 TRIBUNAL-APPOINTED EXPERTS**

The arbitral tribunal may appoint one or more expert witnesses on its own initiative or at the request of a party if the arbitral tribunal considers it necessary for resolution of the case and may request a party to provide the expert witness with appropriate

information or make available or hand over to it any documents or objects in its possession for the purpose of preparing a report.

### **§33 HEARING**

1. The arbitral tribunal should order a hearing to be held if a party so demands or if the arbitral tribunal considers that a hearing is necessary for a sufficient clarification of the case and for resolution of the dispute, unless the parties agree that the arbitration shall be conducted only on the basis of documents or other evidence of a similar nature.
2. The hearing shall be held in camera, unless the parties decide otherwise.
3. Secretary-General shall inform Parties and its representatives about the date and the place of the hearing, excluding time period fixed in the Procedural Order or during the proceeding with the participation of the parties or its legal representatives. The non-appearance of a duly notified party or its legal representative shall not prevent the hearing from being held. The above shall apply to the non-appearance of a witness *mutatis mutandis*.
4. The hearing is recorded, and the minutes thereof are drawn up. The minutes are drawn up by a recording clerk appointed by the Secretary-General. The minutes are signed by the presiding arbitrator and the recording clerk. The arbitral tribunal shall determine the manner and the time limit for the parties to file requests for corrections to the minutes and shall decide the requests. The arbitral tribunal may, after consultation with the parties, decide that the course of a hearing shall be additionally recorded in a different manner.

### **§34 CLOSING OF THE EVIDENTIARY PROCEEDINGS**

1. The arbitral tribunal shall issue an order on the closing of the evidentiary proceedings if it considers the case sufficiently clarified for a resolution on the merits.
2. Due to important reasons, the arbitral tribunal may reopen the evidentiary proceedings.

### **§35 WAIVER OF A PLEA OF BREACH OF THE RULES OR OF THE AGREED PROCEDURE**

If a party knew or should have known of a breach of the Rules or of the procedure agreed by the parties, and still did not immediately raise a plea of such breach, the party may not raise such plea before the arbitral tribunal or rely on such breach in proceedings before other courts, in particular in an action to set aside the award of the arbitral tribunal.

### **§36 INTERIM MEASURES**

1. At the request of a party which has prima facie substantiated its claim, the arbitral tribunal may grant such interim measures as it considers appropriate, including measures securing evidence.
2. A request for an interim measure shall be delivered to the arbitrators, to the other parties to the proceedings and to the Lewiatan Court.
3. The arbitral tribunal shall rule on the request to grant an interim measure in a reasoned order. The enforcement of an order to grant an interim measure may be contingent on the requesting party providing appropriate security.
4. A party may request an interim measure even before the constitution of the arbitral tribunal in accordance with the provisions of Appendix II to the Rules (the “Emergency Arbitrator”).
5. Interim measures shall cease to be binding upon the issuance of a final award or an order to terminate the proceedings. However, if the award admits the claim which was secured, the interim measure shall cease to be binding 60 days after the delivery of the award to the party in favour of which the order to grant an interim measure was issued.
6. The arbitral tribunal may, at the request of a party, after setting the time limit for the other party to respond, rule on the modification or termination of an interim measure, including that issued by the Emergency Arbitrator.

## **§37 SUSPENSION AND TERMINATION OF PROCEEDINGS**

1. The arbitral tribunal shall suspend the proceedings:
  - a. at the joint request of the parties;
  - b. in other cases, where circumstances exist preventing the continuation of proceedings, such as the death of a party or the lack of sufficient legal representation for a party to the proceedings, provided that such lack prevents the party from acting.
2. The arbitral tribunal shall resume the proceedings:
  - a. at the request of any party if the proceedings were suspended at the joint request of the parties;
  - b. after the disappearance of the cause of suspension, including the emergence or appointment of the legal successors to a party or the appointment of a trustee to the will.
3. Proceedings suspended at the joint request of the parties shall be terminated if the request to resume the proceedings was not made by any party within one year following the suspension of proceedings. In other cases, the proceedings shall be terminated if they are not resumed within 3 years following the suspension thereof.
4. The arbitral tribunal shall terminate the arbitration if it considers that continuation thereof has become unnecessary or impossible.

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## **AWARD**

## **§38 APPLICABLE LAW**

1. The arbitral tribunal shall apply the law designated by the parties as applicable to the substance of the dispute. Any designation made by the parties of the law of a given state shall be deemed to refer to the substantive law of that state, excluding its conflict of laws rules.
2. Failing such designation by the parties, the arbitral tribunal shall apply the substantive law which it determines to be appropriate.

3. The parties may authorise the arbitral tribunal in writing to decide the dispute in accordance with the general rules of law or *ex aequo et bono*.
4. In all cases, however, the arbitral tribunal shall take into consideration the terms of the contract and trade customs applicable to the legal relationship concerned.

### **§39 TIME LIMIT FOR THE AWARD**

1. The award shall be issued within 6 months following the constitution of the arbitral tribunal. The President of the Lewiatan Court may, at the request of the arbitral tribunal, extend the time limit for issuing the award in accordance with the circumstances of the case.
2. If the award was not issued within this time limit due to reasons for which the arbitral tribunal or some of its arbitrators are responsible, such default may affect the level of the arbitrators' fees.

### **§40 MAKING OF AWARDS**

1. The arbitral tribunal shall issue the award after having held deliberations in camera involving a discussion of and a vote on the award and on the reasons upon which the award is based.
2. If the dispute is settled by more than one arbitrator, the award shall be made by a majority vote. If there is no majority, the presiding arbitrator shall have a casting vote.
3. The award should be drawn up in writing and state the arbitration agreement upon the basis of which it was issued or other reasons for the jurisdiction of the Lewiatan Court, the names of the arbitrators and the parties and the determination as to the parties' claims, the reasons upon which the award is based, as well as the date and place of the award.
4. The award should be signed by the arbitrators by whom it was issued. If an arbitrator refuses to or cannot sign the award, the signatures of the majority of the arbitrators shall be sufficient, provided that the reasons for the missing signatures are stated. If there is no majority, the signature of the presid-

ing arbitrator shall be sufficient, provided that the reasons for the missing signatures are stated.

5. Copies of the award, signed by the President of the Lewiatan Court and the Secretary-General to confirm the authenticity of the signatures of the arbitrators and the finality of the award, and bearing the seal of the Court, shall be delivered by the Lewiatan Court to the parties or their legal representatives, provided that the latter were appointed by the parties.
6. The award shall be presumed to have been issued at the place of arbitration.

#### **§41 EFFECT OF THE AWARD**

1. Subject to Section 2, the award shall be final and binding upon the parties to the arbitration. The parties undertake to carry out the award without undue delay. The above shall be without prejudice to the provisions governing the action to set aside the award.
2. If the parties also provided for appeal proceedings in their arbitration agreement, the provisions of Appendix V of the Rules shall apply in the absence of any provisions to the contrary.

#### **§42 PARTIAL AND PRELIMINARY AWARDS**

The arbitral tribunal may settle a specific issue or a portion of a claim or some claims in a separate award. Such award may assume the form of a partial or preliminary award.

#### **§43 SETTLEMENT**

1. If the parties reach a settlement before the Lewiatan Court, the arbitral tribunal may, at the request of the parties, record the settlement in the form of a consent award.
2. At the parties' joint request to record the settlement concluded in mediation proceedings in the form of a consent award, the Nominating Committee shall appoint the mediator as an arbitrator. Under the Rules of the Lewiatan Court,

the arbitrator shall have the authority to issue the award in the case.

The Secretary-General shall call on the parties to the proceedings to pay, within a time limit not shorter than 7 days, the arbitration fee specified in the Lewiatan Court's Tariff of Fees, in effect on the date on which the request to record the settlement in the form of a consent award was submitted.

3. The arbitral tribunal shall refuse to record the settlement in the form of a consent award if it considers that the parties (i) were involved in a fictitious dispute; (ii) may use the award to achieve an unlawful purpose or to harm a third party; or (iii) the award otherwise violates the fundamental principles of public policy of the state in which the place of arbitration is located.

#### **§44 OTHER RULINGS**

The presiding arbitrator may issue rulings on procedural matters on his or her own, after prior consultation with the other arbitrators.

#### **§45 SUPPLEMENTATION, INTERPRETATION AND CORRECTION OF THE AWARD**

1. Within 14 days of receiving the award, each party may request that the arbitral tribunal supplement the award, provide an interpretation thereof and correct any clerical or computational errors or other manifest errors. The requesting party shall be obliged to deliver a copy of the request to the other party.
2. The arbitral tribunal shall rule on the supplementation or interpretation of the award within 30 days following submission of the request, and on the correction of an error within 14 days following submission.
3. Within 14 days following issuance of the award, the arbitral tribunal may ex officio correct clerical or computational errors or other manifest errors.

## **§46 RECORDS OF ARBITRAL PROCEEDINGS**

The Secretariat of the Lewiatan Court shall keep the records of cases in its archive for a period of 10 years.

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## **COSTS OF ARBITRATION**

### **§47 COSTS OF ARBITRATION**

1. The costs of arbitration shall include: the administrative fee and the fees of the arbitrators or of the Emergency Arbitrator, as determined on the basis of the Tariff of Fees in effect on the date of commencement of arbitration, the reasonable expenses of the arbitrators or of the Emergency Arbitrator and of expert witnesses, the reasonable costs of the parties' legal representation; as well as other reasonable costs incurred by the parties.
2. The arbitral tribunal shall rule in the award on the costs of arbitration and on the apportionment of costs between the parties. Before issuing the award, the arbitral tribunal shall request that the Secretary-General submit a summary of arbitration costs.
3. If the arbitral proceedings are concluded before the issuance of the award, the arbitral tribunal shall rule on the costs of operation of the Lewiatan Court in a ruling which brings the arbitration to an end.

### **§48 COSTS INCURRED BY THE PARTIES**

1. The arbitral tribunal may, at the request of a party, award the costs of legal representation and other costs incurred by the party in the award or in other ruling which brings the arbitration to an end. In making a decision, the arbitral tribunal should bear in mind: (i) the outcome of the arbitration and (ii) other relevant circumstances.



2. The party requesting an award of costs from the other party should submit a list of the costs incurred by it.

## **§49 DEPOSIT OF COSTS**

1. The Secretary-General shall request the claimant, counter-claimant or a party requesting the joinder of a third party to pay the administrative fee and an advance for the costs of arbitration in a stipulated period of time, not shorter than 7 days.
2. The Secretary-General shall request the party raising a set-off plea to pay an advance for the costs of the arbitration within a stipulated period of time, not shorter than 7 days. No administrative fee shall be charged.
3. The Secretary-General shall request the third-party intervenor to pay the administrative fee within a stipulated period of time, not shorter than 7 days.
4. The amount of the advance shall be determined on the basis of the Tariff of Fees. The advance may change at any time during the arbitration, in particular in the event of a change to the amount in dispute and a change to the expenses envisaged by the arbitral tribunal. During the course of arbitration the Secretary-General shall, on the motion of the arbitral tribunal, request additional deposits from the parties.
5. At the reasoned request of a party, the President of Lewiatan Court may spread the deposit into instalments at his or her sole discretion and in accordance with the circumstances.
6. If the deposit paid by a party exceeds the costs of arbitration, the Lewiatan Court shall ex officio return the difference between the amount of the deposit and the costs of arbitration to the party after the arbitration is concluded.

The Rules shall enter into force on 1<sup>st</sup> March 2012.

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## APPENDICES

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## APPENDIX 1

### ORGANISATIONAL STRUCTURE OF THE LEWIATAN COURT

#### § 1 GOVERNING BODIES

1. The governing bodies of the Lewiatan Court are as follows:
  - a. The Arbitration Committee,
  - b. The Nominating Committee,
  - c. The President of the Court,
  - d. The Secretary-General.
2. The President of the Court may establish additional committees, including the Honorary Advisory Committee and the Publishing Committee.

#### § 2 THE ARBITRATION COMMITTEE

1. The Arbitration Committee:
  - a. manages the Lewiatan Court,
  - b. performs other duties, as set forth in the Rules.
2. The Arbitration Committee is composed of at least 5 members, including the President of the Court of Arbitration and three vice presidents.
3. The President of the Court shall be appointed and dismissed by the Management Board of Polish Confederation Lewiatan. The other members of the Arbitration Committee shall be appointed and dismissed by the Management Board of Polish Confederation Lewiatan in consultation with the President of the Court.
4. The Arbitration Committee shall pass resolutions by a majority vote of all of its members present at the meeting.
5. The term of office of each member of the Arbitration Committee is three years. Members of the Arbitration Committee may be appointed for subsequent terms of office. The terms of office of members of the Arbitration Committee are shared and commence on the date of appointment of the President of the Court.
6. During his or her term of office, a member of the Arbitration Committee may not be a legal representative of a party in disputes settled under the Rules or in disputes in which the Arbitration Committee, the Court of Arbitration or Polish Confed-

eration Lewiatan were identified as the authority competent to nominate substitute arbitrators.

7. During his or her term of office, a member of the Arbitration Committee may not serve as an arbitrator in the disputes referred to in Section 6. This prohibition shall not apply to a member who serves as a presiding arbitrator appointed by the arbitrators or by the parties or as a sole arbitrator appointed by the parties.

### **§3 PRESIDENT AND VICE PRESIDENTS OF THE COURT**

1. The President of the Court shall represent the Court outside the Court, coordinate the internal work of the Court and perform other duties, as set forth in the Rules.
2. The Vice Presidents of the Court and members of the Arbitration Committee shall deputise for the President of the Court in matters entrusted to them by the President or by the Arbitration Committee.

### **§4 NOMINATING COMMITTEE**

1. The Nominating Committee:
  - a. shall nominate substitute arbitrators and rule on the expiry of an arbitrator's mandate if the arbitrator is disqualified or replaced,
  - b. shall perform other duties, as set forth in the Rules.
2. The Nominating Committee shall be composed of the Chairperson and two members.
3. The Chairperson of the Nominating Committee and its members shall be appointed and dismissed, at the request of the President of the Court, by the Management Board of Polish Confederation Lewiatan.
4. The Nominating Committee shall carry out its work subject to secrecy, including in relation to the parties.
5. In performing its duties, the Nominating Committee shall not be bound by any instructions or opinions.
6. The Nominating Committee shall pass resolutions by a majority vote of all its members. Resolutions of the Nominating Committee shall be confirmed by the minutes signed by the Chairperson.
7. The terms of office of members of the Nominating Committee shall be shared and shall last three years from the date

of appointment of its Chairperson. Members of the Nominating Committee may be appointed for subsequent terms of office.

8. The restrictions referred to in §2 Sections 6 and 7 of this Appendix shall apply to members of the Nominating Committee.

## **§5 SECRETARY-GENERAL**

1. The Secretary-General shall manage the Secretariat of the Lewiatan Court of Arbitration and perform other tasks, as set forth in the Rules.
2. The Secretary-General and his or her deputies shall be appointed and dismissed, at the request of the President of the Lewiatan Court, by the Management Board of Polish Confederation Lewiatan.
3. The Secretary-General shall perform his or her tasks under the direction of the Arbitration Committee, and after the arbitral tribunal is appointed in a given case – under the direction of the presiding arbitrator.
4. The deputies of the Secretary-General shall perform the duties of the Secretary-General in matters delegated to them.

## **§6 AMENDMENT TO THE RULES AND TO THE TARIFF OF FEES**

Amendments to the Rules as well as to the Tariff of Fees shall be made at the request of the Arbitration Committee or on the initiative of the President of the Polish Confederation Lewiatan, in the form of an executive order of the President of the Polish Confederation Lewiatan. Article 19 Point 12 of the Statutes of the Polish Confederation Lewiatan shall apply *mutatis mutandis*.

## **§7 STANDARDS OF OPERATION**

Members of the governing bodies of the Lewiatan Court should perform their duties with due diligence and dedication.

## **§8 SEAL**

The Lewiatan Court uses a round seal bearing its name and the address of its seat.

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## APPENDIX 2

### EMERGENCY ARBITRATOR

#### §1 EMERGENCY ARBITRATOR

1. Unless the arbitration agreement provides otherwise, a party may submit a request for the Emergency Arbitrator to be appointed.
2. At the request of a party which has prima facie substantiated its claim, the Emergency Arbitrator may issue a ruling on an interim measure until the time the arbitral tribunal is constituted.

#### §2 REQUEST FOR THE EMERGENCY ARBITRATOR TO BE APPOINTED

1. A request for the Emergency Arbitrator to be appointed shall be submitted to the Court of Arbitration. The request should state:
  - a. the names of the parties and of their legal representatives, if a party has a legal representative, including their addresses, telephone numbers and e-mail addresses;
  - b. the arbitration agreement or other grounds for the jurisdiction of the Lewiatan Court;
  - c. a submission on the place of the arbitral proceedings before the Emergency Arbitrator, the language of arbitration and the grounds for deciding the dispute;
  - d. the substance of the dispute;
  - e. the interim measure requested by the party and the circumstances prima facie substantiating the claim;
  - f. proof of payment of the costs of emergency proceedings in accordance with the Tariff of Fees.
2. The request should be accompanied by a copy of the arbitration agreement and copies of the request for the other party and for the Lewiatan Court.
3. Following the appointment of the Emergency Arbitrator, the President of the Lewiatan Court shall deliver a copy of the request to the other party in accordance with §3 of the Rules. Failure by the other party to submit a reply to the request for the Emergency Arbitrator to be appointed shall not stop the proceedings.

4. If the language of arbitration is other than Polish, English or Russian, the request must be accompanied by the translation thereof into one of these languages.

### **§3 DELIVERY**

1. Unless the parties agree otherwise, any communications in the proceedings shall be delivered by electronic means: (i) if to the parties – to the e-mail address indicated in the arbitration agreement or in a subsequent written submission of a party; (ii) if to the Emergency Arbitrator – to the address indicated by the Arbitrator, (iii) if to the Lewiatan Court – to the address of the Court.
2. All communications shall be delivered along with a copy to the Secretary-General, the Emergency Arbitrator or the other party, if they are not the addressees.
3. In the event of a request for the Emergency Arbitrator to be appointed, a copy of which the President of the Lewiatan Court shall deliver to the other party in accordance with §2 Section 3 or if delivery by electronic means is impossible or materially hindered, §3 of the Rules shall apply *mutatis mutandis*.

### **§4 APPOINTMENT OF THE EMERGENCY ARBITRATOR**

1. If the President of the Court considers that the Lewiatan Court has jurisdiction to settle the dispute, he or she shall appoint the Emergency Arbitrator within 2 business days following receipt of a request for the Emergency Arbitrator to be appointed and payment of the costs of the arbitral proceedings before the Emergency Arbitrator. The President of the Court shall deliver the request to the Emergency Arbitrator.
2. The person who was approached in connection with his or her possible appointment as the Emergency Arbitrator should immediately disclose any circumstances likely to give rise to doubts as to his or her impartiality or independence.
3. A challenge to the Emergency Arbitrator may be made within 24 hours after the challenging party has learned of the circumstances likely to give rise to doubts as to the impartiality or independence of the Emergency Arbitrator. The challenge shall be considered by the President of the Court within 2

business days and, if it is approved, the President shall appoint a new Emergency Arbitrator.

4. Unless the parties decide otherwise, the Emergency Arbitrator may not accept his or her appointment as an arbitrator in the arbitration which the dispute concerns.

## **§5 PROCEEDINGS BEFORE THE EMERGENCY ARBITRATOR**

1. The Emergency Arbitrator shall conduct the proceedings in the manner he or she deems appropriate, taking into consideration the nature of the proceedings; with the proviso that the parties should be treated with equality and each party should be given an opportunity to present its case and evidence in support thereof.
2. In matters not expressly provided for in this Appendix, the President of the Court, the Emergency Arbitrator and the parties shall act in accordance with the spirit of the Rules and of this Appendix, having regard to the nature of proceedings before the Emergency Arbitrator.
3. The place of arbitration agreed by the parties shall be the place of proceedings before the Emergency Arbitrator. Unless it was agreed by the parties, the place of arbitration shall be presumed to be in Warsaw.
4. The proceedings before the Emergency Arbitrator shall be conducted in the language agreed by the parties for the arbitration. If there was no such agreement between the parties, the language of the proceedings before the Emergency Arbitrator shall be determined by the Emergency Arbitrator.
5. The proceedings before the Emergency Arbitrator shall be confidential. §4 of the Rules shall apply *mutatis mutandis*.

## **§6 ORDER OF THE EMERGENCY ARBITRATOR ON AN INTERIM MEASURE**

1. The Emergency Arbitrator shall issue an order concerning an interim measure no later than 7 business days after a request to appoint an Emergency Arbitrator has been transmitted thereto. The President of the Court of Arbitration may, at



the request of the Emergency Arbitrator or in other justifiable cases, extend the time limit for issuing the order.

2. The Emergency Arbitrator may grant such an interim measure as it may consider appropriate, including a measure securing the evidence. Enforcement of the order to grant an interim measure may be made contingent on the requesting party providing appropriate security.
3. The order by the Emergency Arbitrator referred to in Section 1 should be drawn up in writing, state the date and place of the proceedings before the Emergency Arbitrator and the reasons on which it is based, as well as bear the signature of the Emergency Arbitrator. The Emergency Arbitrator shall immediately send a copy of the order to each party and to the President of the Court.
4. The order to grant an interim measure shall become binding on the parties upon delivery thereof. The parties undertake to carry out the order by the Emergency Arbitrator to grant an interim measure without undue delay. The arbitral tribunal shall not be bound by the determinations of the Emergency Arbitrator.

## **§7 LOSS OF FORCE BY THE ORDER TO GRANT AN INTERIM MEASURE**

The order to grant an interim measure shall cease to be binding if:

- a. the Emergency Arbitrator or the arbitral tribunal, after its constitution, so decides;
- b. the arbitral proceedings were not commenced within 30 days following the issuance by the Emergency Arbitrator of the order to grant an interim measure;
- c. the arbitral tribunal was not constituted within 90 days following the issuance by the Emergency Arbitrator of the order to grant an interim measure;
- d. upon the issuance of the final award or of a ruling on the termination of the proceedings. However, if the award grants the claim which was secured, the interim measure shall cease to be binding 60 days after the award has been delivered to the party which obtained the interim measure.

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## **APPENDIX 3**

### **EXPEDITED PROCEDURE**

#### **§1 GENERAL PROVISIONS**

1. Expedited proceedings shall be conducted pursuant to this Appendix.
2. In any matters not provided for in this Appendix, the provisions of the Rules shall apply *mutatis mutandis*; with the proviso that the time limits for taking specific actions, as determined in the Rules or fixed on the basis hereof, shall be abridged to 7 days.

#### **§2 DELIVERY**

1. Unless the parties or the arbitrator decide otherwise, any written communications in the proceedings shall be delivered by electronic means: (i) if to the parties – to the e-mail address indicated in the arbitration agreement or in a subsequent written submission of the party; (ii) if to the arbitrator – to the address indicated by the arbitrator, (iii) if to the Lewiatan Court – to the address of the Court. A substitute arbitrator shall also be nominated by electronic means.
2. All communications shall be delivered along with a copy to the Secretary-General, the sole arbitrator or the other party, if they are not the addressees.
3. If delivery by electronic means is impossible or materially hindered, §3 of the Rules shall apply *mutatis mutandis*.

#### **§3 STATEMENT OF CLAIM AND OTHER SUBMISSIONS**

1. Expedited proceedings shall be commenced upon the filing of a statement of claim with the Lewiatan Court.
2. Within 14 days following the delivery of a statement of claim, the respondent shall file a statement of defence. In justifiable cases, the Secretary-General may extend the time limit for filing a statement of defence – by no longer, however, than another 14 days.

3. Unless the arbitral tribunal decides otherwise, after filing the statement of claim and the statement of defence each party may file one submission, including the reply to a counterclaim and requests to take evidence.

#### **§4 ARBITRAL TRIBUNAL**

1. The dispute shall be settled by the arbitral tribunal consisting of a sole arbitrator.
2. The parties shall jointly appoint a sole arbitrator within 14 days following delivery of the statement of claim to the respondent. If this period of time lapses to no effect, the sole arbitrator shall be nominated by the Nominating Committee within 3 business days.

#### **§5 EFFECT OF THE AMOUNT IN DISPUTE ON THE PROCEDURE**

1. If, after examining the amount in dispute specified in a statement of claim or in a counterclaim, the said amount is actually higher than that specified in §5 of the Rules, the arbitral tribunal shall continue the proceedings in accordance with the expedited procedure, informing the parties of its determination.
2. The arbitral tribunal may conduct the proceedings in accordance with the expedited procedure also if the amount in dispute stated in the counterclaim is higher than that specified in §5 Section 1 letter a of the Rules, informing the parties of its determination.
3. At the request of a party submitted, at the latest, within 3 days following the date of the notification referred to in Section 2, the arbitral tribunal shall refer the dispute to arbitration conducted in accordance with the general provisions of Rules in whole or only in the scope of the counterclaim, taking all circumstances of the case into consideration.
4. If the dispute was referred to arbitration conducted in accordance with the Rules, the sole arbitrator shall accept his or her appointment as presiding arbitrator, and the parties shall choose the other arbitrators in accordance with the Rules within 14 days of being requested to do so by the presiding arbitra-

tor. If this period of time lapses to no effect, the arbitrator(s) shall be nominated by the Nominating Committee.

5. If the dispute was referred to arbitration conducted in accordance with the Rules, the submissions previously filed in electronic form shall be effective. The arbitral tribunal may amend the previous orders and rulings issued in the expedited proceedings.

## **§6 EVIDENTIARY PROCEEDINGS**

1. The parties may submit new evidence and requests to order the submission of documents possessed by the other party within 14 days after the statement of defence has been filed by the respondent. The arbitral tribunal may admit new requests to take evidence or evidence submitted by a party after this deadline, taking all circumstances of the case into consideration.
2. The arbitral tribunal may order that the parties file additional submissions, explanations, statements or evidence within 7 days following the hearing date.

## **§7 HEARING**

1. If it is necessary for resolution of the case, the arbitral tribunal shall schedule a hearing.
2. The arbitral tribunal shall draw up abbreviated minutes of the hearing and shall inform the parties of their content during the course of the hearing, noting down objections (if any).

## **§8 AWARD**

1. The award shall be issued within 3 months following the constitution of the arbitral tribunal. In justifiable cases, the President of the Court may, at the request of the arbitral tribunal, extend the time limit for issuing the award.
2. The award should state the reasons upon the basis of which it is issued.

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## APPENDIX 4

### MODEL STATEMENT OF IMPARTIALITY AND INDEPENDENCE STATEMENT BY AN ARBITRATOR

MADE BY  
[FULL NAME]

Case no.: [•]

Parties to the arbitration: [•]

#### ACCEPTANCE OF APPOINTMENT AS ARBITRATOR

- I accept my appointment as arbitrator in the arbitration conducted pursuant to the Rules of the Court of Arbitration at the Polish Confederation Lewiatan (the “Rules”) in the case referenced above. I confirm that I know the provisions of the Rules. I accept the fact that my fee shall be calculated in accordance with the provisions of the Rules and the Tariff of Fees.

#### REFUSAL TO ACCEPT APPOINTMENT AS ARBITRATOR

- I decline my appointment as arbitrator in the case referenced above.

#### IMPARTIALITY AND INDEPENDENCE

An arbitrator should disclose all circumstances likely to give rise to doubts as to his or her impartiality or independence. In assessing the independence and impartiality of an arbitrator, the IBA Guidelines on Conflicts of Interest in International Arbitration shall apply as the minimum standard. Doubts as to the impartiality or independence of an arbitrator may arise if a direct or indirect economic, professional, personal or any other type of relation existed or exists between the arbitrator and a party or entities associated with it in any manner whatsoever. In the event of doubts, the arbitrator shall disclose all circumstances likely to give rise to doubts as to his or her impartiality or independence. Such disclosure should be complete and thorough, and should include, among others, information on financial arrangements, personal data and the period in which the questionable relation existed, as well as other relevant circumstances.

NO CIRCUMSTANCES EXIST WHICH ARE LIKELY TO GIVE RISE TO DOUBTS AS TO MY IMPARTIALITY AND INDEPENDENCE:

- I am impartial and independent. To the best of my knowledge, no

circumstances exist which are likely to give rise to doubts as to my impartiality or independence and which I should disclose. If any circumstances likely to give rise to the above doubts arise during the course of arbitral proceedings, I shall immediately disclose them to the parties, to the other arbitrators and to the Lewiatan Court.

**DISCLOSURE OF CIRCUMSTANCES LIKELY TO GIVE RISE TO DOUBTS AS TO MY IMPARTIALITY AND INDEPENDENCE:**

- I am impartial and independent. Being aware of my obligation to disclose all circumstances likely to give rise to doubts as to my impartiality or independence, I call your attention to the following circumstances set out in the attachment to this Statement.

**AVAILABILITY**

- I shall perform my duties as an arbitrator with dedication and due diligence. I declare that, despite my ongoing professional commitments, I am able to devote a sufficient amount of time to conduct the arbitral proceedings in an efficient and diligent manner. I am aware that protracted arbitral proceedings, in particular failure to meet the deadline stipulated in §39 Section 1 of the Rules, may result in a reduction of my fee. Below I present my ongoing professional commitments for the attention of the Lewiatan Court and the parties.

Occupation:

Number of ongoing cases in which I am participating:

	As presiding arbitrator / sole arbitrator	As co-arbitrator	As the legal representative of a party
Arbitral proceedings			
Court proceedings			

Place and date \_\_\_\_\_

Signature \_\_\_\_\_

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## APPENDIX 5

### THE RULES OF APPEAL PROCEEDINGS

#### PRELIMINARY PROVISIONS

##### § 1

1. If the parties also provided for appeal proceedings in their arbitration agreement, in the absence of the parties' determinations to the contrary, the appeal proceedings (the "Appeal Proceedings") shall be conducted under these Rules of Appeal Proceedings (the "Rules of Appeal Proceedings").
2. These Rules of Appeal Proceedings also apply if the case is heard under the rules of a different permanent court of arbitration or by ad hoc arbitration if the parties to the arbitration agreement provided therein for an appeal to the Lewiatan Court against the award so issued or if they otherwise agreed that the arbitration would also involve appeal proceedings and that the latter would be administered by the Lewiatan Court or would be conducted under these Rules of Appeal Proceedings.
3. Any references in these Rules of Appeal Proceedings to the Arbitral Tribunal shall mean the arbitration court (arbitral tribunal) which issued the award in the first-instance proceedings.

#### APPEAL

##### § 2

1. Within 21 days of the delivery of the award to a party to the proceedings before the Arbitral Tribunal, the party may file an appeal with the Lewiatan Court.
2. If a party submits a request to supplement, interpret or correct the award, the time limit for filing an appeal shall begin to run on the date of delivery of the decision relating to such supplementation, interpretation or correction of the award.

### § 3

1. The appeal against the Arbitral Tribunal's award should:
  - a. name the parties, indicate their addresses, telephone numbers and e-mail addresses if such information is known to the appealing party;
  - b. name the legal representatives (if any), as well as indicate their e-mail addresses and telephone numbers if such information is known to the claimant;
  - c. state the reference number of the proceedings before the Arbitral Tribunal;
  - d. state whether the Arbitral Tribunal's award is contested in whole or in part;
  - e. indicate the value of the appeal's object;
  - f. state the charges, together with the reasons;
  - g. state the appeal's conclusions;
  - h. indicate the arbitration agreement or other reasons for the Court of Arbitration's jurisdiction to hear the appeal;
  - i. name the arbitrator appointed by the party and indicate his or her address phone number and – if it is known to a Party – an e-mail address, if the Arbitral Tribunal is composed of three arbitrators and the parties did not agree otherwise.
2. The following documents should be attached to the appeal:
  - a. copies of the appeal, including attachments, for each arbitrator and for the opposing party;
  - b. the original copy or a certified copy of the power of attorney if attorneys-in-fact were appointed;
  - c. the original copy or a certified copy of the Arbitral Tribunal's award.
3. After the appeal is filed, the Secretary-General calls on the party to pay for the appeal within the prescribed time limit.

### § 4

1. If the appeal does not meet the formal requirements set out in § 3 Section 1 or Section 2, the Secretary-General shall promptly call on the party to cure deficiencies in the appeal within 7 days.
2. After the appeal is filed and paid for and, in the case specified in § 4 Section 1, after deficiencies in the appeal are cured, the Secretary-General shall promptly inform the parties that the



appeal was received by the Court of Arbitration, sending its copy to the opposing party.

3. If the appeal is not duly supplemented or paid for within the prescribed time limit, the Secretary-General shall promptly return the appeal to the appellant, concurrently informing both parties thereof.

## **FINAL AWARD**

### **§ 5**

1. If no appeal was filed within the time limit set in § 2, the Arbitral Tribunal's award shall become final upon the expiry of the time limit for filing the appeal.
2. If all appeals are returned under § 4 Section 3, the Arbitral Tribunal's award shall become final upon the delivery of a return notice.
3. If the Appeal Proceedings are discontinued, the Arbitral Tribunal's award shall become final upon the delivery of a notice of discontinuance of the Appeal Proceedings – in whole or in the relevant part.
4. The Arbitral Tribunal's award shall be final.

## **APPEAL PANEL**

### **§ 6**

1. The Appeal Panel shall nominate the sole arbitrator or all arbitrators appointed to hear the appeal.
2. The appeal shall be heard by the Appeal Panel composed of three arbitrators, unless the parties decided otherwise.
3. The party opposing the appeal may appoint an arbitrator in its own appeal (if it was filed). If only one appeal was filed, the party opposing the appeal should appoint an arbitrator in the answer to the appeal, at the latest.
4. No member of the Arbitral Tribunal may be a member of the Appeal Panel.

## **ANSWER TO THE APPEAL**

### **§ 7**

Unless the parties decided otherwise, the party opposing the appeal may file the answer to the appeal within 21 days of the delivery of a copy of the appeal thereto.

## **PRELIMINARY MEETING AND EVIDENTIARY PROCEEDINGS**

### **§ 8**

- 1.** Immediately after having been constituted, the Appeal Panel shall order a preliminary meeting. The preliminary meeting may be organized by means of distance communication or other appropriate means.
- 2.** The Appeal Panel shall not, in principle, conduct or repeat evidentiary proceedings; however, it shall examine the documentation submitted by the parties to the Appeal Proceedings. The Appeal Panel is under no obligation to examine the records of the proceedings conducted by the Arbitral Tribunal to the extent that they were not submitted by the parties.
- 3.** Where such documents are material to the consideration of the appeal, a party may submit to the Appeal Panel the protocols of the hearings conducted by the Arbitral Tribunal, pleadings filed with the Appeal Panel, expert opinions and other documents which were submitted to the Arbitral Tribunal.
- 4.** The Appeal Panel may, if it deems it reasonable, re-take any evidence taken by the Arbitral Tribunal or admit any evidence submitted to, but not admitted by, the Arbitral Tribunal.
- 5.** If it was impossible to submit any evidence to the Arbitral Tribunal or if the need to submit such evidence arose after the award had been issued by the Arbitral Tribunal, the Appeal Panel may admit the evidence which was not submitted to the Arbitral Tribunal.

## **HEARING**

### **§ 9**

1. Unless the parties decided otherwise, the Appeal Panel shall decide the appeal based on the documents submitted by the parties, without holding any hearing.
2. The Appeal Panel may, however, schedule a hearing *ex officio* or at the request of a party if it deems it appropriate.

## **DETERMINING JURISDICTION**

### **§ 10**

1. The Appeal Panel may determine its jurisdiction under general principles, except that, if it decides that it has no jurisdiction, it shall discontinue the Appeal Proceedings – in whole or in the relevant part.
2. The Appeal Panel may determine the jurisdiction of the Arbitral Tribunal only if the jurisdictional challenge was made within an appropriate period of time before the Arbitral Tribunal; however, if it is decided that the Arbitral Tribunal had no jurisdiction, the Appeal Panel shall reverse the Arbitral Tribunal's award and shall discontinue the Appeal Proceedings – in whole or in the relevant part.

## **LIMITS OF REVIEW; APPEAL PANEL'S AWARD**

### **§ 11**

1. The Appeal Panel shall decide the appeal within the limits of the appeal and of the charges presented; in particular, the Appeal Panel may not reverse or amend the award to the disadvantage of the appellant, unless the opposing party also filed an appeal.
2. Upon the expiry of the time limit for filing the appeal, a party may not enlarge the scope of the appeal or present any new charges.

## § 12

1. In its award, the Appeal Panel shall:
  - a. accept the Arbitral Tribunal's award as its own, incorporating its content into the Appeal Panel's award;
  - b. amend the Arbitral Tribunal's award on appeal and decide the case on its merits if any of the appeals proves well-founded and – with regard to the part of the Arbitral Tribunal's award in which the appeals proved unfounded or the Arbitral Tribunal's award was not appealed against – it shall accept this part of the Arbitral Tribunal's award as its own, incorporating its relevant part into the Appeal Panel's award.
2. The Appeal Panel may not remand the matter to the Arbitral Tribunal to rehear.

## § 13

If the appeal is withdrawn, the Appeal Panel shall discontinue the Appeal Proceedings, unless the award is contested by a different appeal.

## **MISCELLANEOUS**

### § 14

As regards the Appeal Proceedings, in matters which were not settled in the Rules of Appeal Proceedings, the provisions of the Rules and the Tariff of Fees shall apply as appropriate. In particular, the provisions relating to the Arbitral Tribunal shall apply to the Appeal Panel as appropriate.







