Beispiel 19 b) Procedural Order

P1

vs

1. S, 2. SG

Arbitral Tribunal
Co-Arbitrator 1
Co-Arbitrator 2
Arbitrator 3 (President)

PROCEDURAL ORDER No. 1

In the arbitral proceedings between

P1

- Claimant -

A N D

1. S

- Respondent 1 -

2. SG

- Respondent 2 -

(Claimant and Respondents are hereinafter collectively referred to as the “Parties” and individually as a “Party”.)

following a case management conference which took place on … the Arbitral Tribunal determines the further procedural aspects of the arbitration and issues the following

Procedural Order No. 1

1. Constitution of the Arbitral Tribunal

1.1 On …, the German Institution of Arbitration (“DIS”) appointed the president in the above proceedings. The Arbitral Tribunal was thereby constituted effective the same day. The Arbitral Tribunal consists of:

1.2 The president:

- President -

1.3 The co-arbitrator nominated by Claimant:

- Co-Arbitrator -

1.4 The co-arbitrator nominated by Respondents:

- Co-Arbitrator –

(President and Co-Arbitrators hereinafter together the "Arbitral Tribunal" and separately the "Arbitrator")
2. Place of Arbitration and language

The arbitration clause submitted in these arbitral proceedings as part of exhibit C- submitted with Claimant’s Request for Arbitration dated … provides that the place of arbitration is Frankfurt am Main, Germany, and the language of the arbitral proceedings is English.

3. Notifications and Communications

3.1 Each Party shall send all communications, notifications, submissions and other documents directly to the Arbitral Tribunal with a copy to the other Parties.

3.2 All written submissions (briefs, memorials and applications), with the exception of communications ordered by the Arbitral Tribunal to be filed simultaneously, shall be sent by e-mail to the Arbitral Tribunal with a copy to the other Parties. Electronic versions of communications ordered by the Arbitral Tribunal to be filed simultaneously shall be transmitted to the Arbitral Tribunal only, who shall send them to the other Party once all Parties’ submissions have been received. A hard copy (with exhibits and attachments, including digital copies) shall be sent via courier service to the Arbitral Tribunal and to the other Parties no later than within three business days (business days exclude Saturdays and Sundays as well as public holidays at the place of dispatch). For the avoidance of doubt, where several Parties are represented by the same Counsel, one hard copy (with exhibits and attachments, including digital copies) for each office in which the Counsel resides shall be sufficient for such Parties. All other communications, including mere procedural requests (e.g. for extension of time limits) shall be made by e-mail only.

3.3 All communications, notifications and other documents by the Arbitral Tribunal to the Parties (including procedural orders but excluding awards) shall be sent by e-mail only. Parties’ Counsel shall confirm the receipt of a communication from the Arbitral Tribunal by a “reply all” e-mail if so requested.

3.4 All communications, notifications, submissions and other documents in this arbitration shall be deemed to have been validly made provided they are made (i) if to the Arbitral Tribunal, to the addresses as set out in Section 1 or notified later in this arbitration; and (ii) if to the Parties, to their respective Counsel at the addresses set out on pages 1 and 2 (including to the respective e-mail addresses as applicable) or notified later in this arbitration. Any changes in the addresses or other particulars set out in Section 1 and pages 1 to 2 shall be notified to the Parties’ Counsel and the Arbitral Tribunal without undue delay. Prior to the receipt of such notification, all communications, notifications, submissions or other documents may be validly made to the addresses set out in Section 1 and pages 1 to 2 (including to the respective e-mail addresses as applicable).

4. Time Limits and Procedural Timetable

4.1 The Arbitral Tribunal intends to conduct the arbitration in accordance with the Procedural Timetable attached hereto as an Annex. The Arbitral Tribunal reserves the right to amend and modify the Procedural Timetable in the course of this arbitration, after consultation with the Parties, as the Arbitral Tribunal deems appropriate.

4.2 The time limits fixed in the Procedural Timetable or set forth by the Arbitral Tribunal must be complied with. All time limits are set pursuant to CEST or CET, as the case may be.

4.3 The Arbitral Tribunal may extend a time limit if necessary and appropriate. The Arbitral Tribunal shall only grant extension of a time limit as an exception and only upon application of a Party if it is made without undue delay and - as a rule - prior to the expiry of the time limit, and states material reasons for the requested extension.

4.4 The Arbitral Tribunal may preclude any submission or evidence as belated and thus inadmissible if a Party disregards a time limit or the aforementioned rules, or makes a submission not provided for in the Procedural Timetable or by other determination by the Arbitral Tribunal. If the need for a submission outside the Procedural Timetable arises in view of one Party, that Party must apply for leave to file such submission.

4.5 The time limit is met if the respective written submission is received by the President by e-mail without exhibits within the applicable time limit, provided that no later than within three business days a hard copy of that written submission including exhibits and attachments as well as digital copies are sent via courier service as provided for under section 3.2 above.
4.6 The Arbitral Tribunal and the receiving Parties shall confirm the receipt of a written submission which is tied to a time limit by a "reply all" e-mail.

5. Briefs and other Written Submissions

5.1 The detailed sequence of written submissions will be fixed by the Arbitral Tribunal in the Procedural Timetable. After the exchange of the scheduled submissions, the Arbitral Tribunal may invite the Parties to exchange further written submissions on particular issues.

5.2 Each of the Parties' written submissions shall be consecutively numbered with paragraph numbers and shall include a table of contents, unless they contain only few pages.

5.3 The Parties' written submissions shall contain a comprehensive, true and substantive discussion of all of the factual, legal and other allegations and arguments on which the respective Party wishes to rely. The Parties shall specifically address allegations and arguments made by the other Parties and include precise references to the respective submission of the other Parties.

5.4 The Parties' written submissions shall identify the documentary, witness and/or expert evidence and legal authorities a Party seeks to rely on as accurately as possible (e.g. by reference to paragraphs or page numbers) and in the immediate context of the respective factual allegation or legal argument.

5.5 Hard copies of briefs and written submissions shall be accompanied by a USB-drive containing digital copies of such submissions, factual and legal exhibits, and expert reports (preferably as high-resolution PDF-files). Alternatively, digital copies can also be submitted by providing a link to a secure file transfer system. The electronic version of written submissions including exhibits and attachments, witness statements and expert reports as well as other electronical documents shall be a searchable PDF-file unless the exhibit, attachment or other digital document is a digital document in another format (e.g. Word, Excel). The digital version of submissions may contain scanned signatures.

6. Exhibits

6.1 The Parties shall not submit such exhibits that have already been exhibited by the other Parties in a previous submission and shall use for reference purposes the identification of such exhibit as introduced by the exhibiting Party.

6.2 The Parties shall submit all exhibits consecutively numbered with a separate tab for each exhibit. Each factual exhibit submitted by Claimant shall be labeled with "C-" and each legal exhibit shall be labeled with "CL-", followed by the applicable number. Exhibits submitted by Respondents 1 and 2 shall be labeled with "R-" or "RL-".

6.3 Each submission shall be accompanied by updated lists of factual and legal exhibits as a separate document. Factual exhibits shall be identified by the number and a distinctive description (type of document, date (if any), author and recipient (if any)). Legal exhibits shall be identified by a precise citation.

7. Documentary Evidence

7.1 Documentary evidence shall be appended to the written submission in which they are first referred to. As an exception, upon application of a Party the Arbitral Tribunal may grant leave to submit such documentary evidence later if the Arbitral Tribunal deems it necessary and appropriate, in particular if such documentary evidence was not reasonably available to the submitting Party at the time of the respective submission.

7.2 Subject to the general obligation of each Party to submit all documentary evidence on which it wishes to rely with its written submissions, and subject to obtaining prior leave from the Arbitral Tribunal, a Party may submit additional documentary evidence provided that such documentary evidence was not reasonably available to the submitting Party at the time of submission of its written memoranda, or is presented for the specific purpose of rebutting new factual allegations made by the other Parties on or after the date of the submitting Party's most recent written memorandum.

7.3 The Parties may submit copies of documents instead of originals. Such copies and originals will be deemed to be true and complete unless a Party disputes their authenticity or completeness, in which case the Arbitral Tribunal may request the originals to be produced to the President.
7.4 Documentary evidence shall be submitted in the original language. If documents are submitted in a language other than the language of the arbitration (i.e. English), the relevant part of the document on which the Party submitting the document relies shall be translated into the language of the arbitration, and no Party may rely on an untranslated part of a non-English language document. All partial translations must give an accurate impression of the true meaning of the document (i.e., by including relevant context that could affect the meaning of the part of the text that is relied upon by the Party submitting the document). For ease of reference, the Parties shall paginate any translation in the same way as the original document. Translations need not be certified unless one of the Parties specifically requests a certified translation and the Arbitral Tribunal determines that a certified translation is required. The Party requesting a certified translation shall indicate for what reasons a certified translation is required. Such indication is not required for documents in the … language. Costs of certified translations are deemed costs incurred in the arbitration.

7.5 Legal authorities shall be submitted in the original language. If legal authorities are submitted in a language other than the language of the arbitration (i.e. English) or in the German language, the relevant part of the legal authority on which the Party submitting the document relies shall be translated into the language of the arbitration and no Party may rely on an untranslated part of that non-English or non-German language legal authority. Any partial translation of a legal authority must give an accurate impression of the true meaning of the legal authority (i.e., by including relevant context that could affect the meaning of the text that is relied upon by the Party submitting the legal authority). Translations need not be certified unless one of the Parties specifically requests a certified translation and the Arbitral Tribunal determines that a certified translation is required. The Party requesting a certified translation shall indicate for what reasons a certified translation is required. Such indication is not required for documents in the … language. Costs of certified translations are deemed costs incurred in the arbitration.

8. Witness Evidence

8.1 Any person - including a Party or a Party's counsel, officer, employee or other representative - may present evidence as a witness. Prior to or after a hearing it shall not be improper for counsel to meet witnesses and potential witnesses to establish facts, prepare witness statements, and prepare for examinations.

8.2 If a Party wishes to adduce testimonial evidence in respect to its allegations, it shall so indicate in its submissions and submit written witness statements together with these submissions, unless it cannot reasonably obtain such statement from a witness and obtains leave from the Arbitral Tribunal. Each witness statement shall

- contain the name and address of the witness, his or her relation to any of the Parties (past and present, if any) and a description of his or her qualifications;
- contain a full and detailed description of the facts, and the source of the witness' information as to those facts, sufficient to serve as that witness' evidence in the matter in dispute;
- contain an affirmation of the truth of that statement;
- be signed by the witness and provide the date and place of signature; and
- identify with specificity any document or other material relied on and, if not already provided in the document exchange, attach a copy or other material relied on.

Such written witness statement does not supplant the examination of a witness in the course of an evidentiary hearing.

8.3 Each Party shall be responsible for summoning its own witnesses to an evidentiary hearing. Being duly informed of the date of a hearing, the Parties will immediately, or at least without undue delay, inform their potential witnesses of these dates to secure their presence at the hearing and to avoid any disruption of the procedural timetable. Examination by video-conference may be permitted under exceptional circumstances at the discretion of the Arbitral Tribunal. Each Party shall preliminarily bear the costs of appearance of its own witnesses, without prejudice to the decision of the Arbitral Tribunal as to which Party shall ultimately bear these costs and to which extent.

8.4 The Arbitral Tribunal shall, at all times, have complete control over the procedure for examining a witness. The Arbitral Tribunal may in its discretion, after consultation with the Parties:

- decline to hear a witness if it considers that the facts in question are either proven by other evidence or irrelevant;
• limit or decline the right of a Party to examine a witness when it appears that a question is irrelevant; and
• direct that a witness be recalled for further examination at any time.

Unless otherwise agreed by the Parties, the procedure for the witness hearings will be as follows:

(i) Witnesses will be heard in the order agreed by the Parties. Failing such agreement, Claimant's witnesses will generally be presented first, followed by Respondent's witnesses.
(ii) Witnesses will not generally be permitted to be present in the hearing room before they have given their evidence. Each Party is entitled to have a Party representative present for the duration of the hearing.
(iii) Each witness called will be invited to confirm or deny, as the case may be, his or her written statement.
(iv) The confirmation of the witness statements will be followed by an examination by the Arbitral Tribunal. The witness may then be examined by the Parties (first the Party adducing the witness as evidence and then the respective other Party).

8.5 Witnesses shall be examined in the language of this arbitration (i.e. English). When a Party presents a witness, who cannot express himself or herself sufficiently well in the language of the arbitration, his or her testimony will have to be translated into such language by an officially accredited interpreter. The Party presenting such witness will be responsible for summoning a sufficiently qualified interpreter to the hearing and shall bear the costs of his or her appearance, without prejudice to the decision of the Arbitral Tribunal as to which Party shall ultimately bear these costs and to which extent. If a Party wishes to rely on the services of an interpreter, it shall inform the Arbitral Tribunal accordingly and provide documentation as to his or her qualifications at least three weeks before a hearing takes place.

9. Expert Evidence

9.1 Each Party may retain and submit to the Arbitral Tribunal the evidence of one or more experts.

9.2 The Arbitral Tribunal may, after consultation with the Parties, appoint one or more experts to prepare an expert report and to be heard on legal or factual issues. The Arbitral Tribunal shall consult the Parties with respect to the selection and terms of any such expert(s). The Arbitral Tribunal may require the Parties to pay an advance on the likely costs of such tribunal-appointed expert(s). In such case Claimant shall pay one half of the advance and the Respondents shall pay the other half of the advance without prejudice to the decision of the Arbitral Tribunal as to which Party shall ultimately bear these costs and to which extent.

9.3 The procedural rules set out in Section 8.2 to 8.5 shall apply mutatis mutandis to expert witnesses, with the exception that expert witnesses may make a presentation of their reports at the beginning of their examination. If the Parties so agree or if the Arbitral Tribunal so orders upon a reasoned application by one of the Parties, expert witnesses shall be allowed in the hearing room at any time

10. Taking of Evidence

10.1 The Arbitral Tribunal may order any measures appropriate for taking evidence. Such measures may include the examination of witnesses (in particular, fact witnesses and expert witnesses), under the supervision of the Arbitral Tribunal or order the production of documents pursuant to Article 28.2 of the DIS-Rules.

10.2 The admissibility, relevance, weight and materiality of the evidence offered by a Party or a witness shall be determined by the Arbitral Tribunal.

10.3 The Arbitral Tribunal is entitled at any time to request the Parties to submit further documents or evidence, if it considers it necessary for the decision on the merits of the case.

10.4 If a Party does not comply with an order of the Arbitral Tribunal concerning the taking of evidence, the Arbitral Tribunal may at its discretion take all necessary decisions regarding the consequences thereof.

11. Hearings

11.1 For each hearing, except case management and pre-hearing conferences, a transcript by a court reporter shall be prepared unless the Arbitral Tribunal, in its due discretion, directs otherwise. The modalities of the recording of the hearing (LiveNote or an equivalent/same-day transcript) will be discussed between the
Parties and the Arbitral Tribunal at a later point. The Parties are responsible for engaging an appropriate court reporter. The costs are to be advanced by the Parties. Claimant shall pay one half of the advance and the Respondents shall pay the other half of the advance without prejudice to the decision of the Arbitral Tribunal as to which Party shall ultimately bear these costs and to which extent.

11.2 The Parties may use demonstrative exhibits (such as charts, diagrams, tabulations, etc.) at any hearing, provided that such demonstrative exhibits do not contain new evidence and fairly reflect the evidence on record. For the avoidance of doubt, slides or other visual aids that reproduce existing documentary exhibits in large form and without amendment shall not constitute demonstrative exhibits. On a date prior to the hearing to be specified by the Arbitral Tribunal, the Parties shall simultaneously submit all demonstrative exhibits to the other Parties and the Arbitral Tribunal.

11.3 Further organizational directions for hearings, meetings and (tele)conferences will be given by the Arbitral Tribunal in due time prior to any such hearing, meeting or (tele)conference by way of a procedural order.

12. **Deposits**

12.1 All costs of the arbitration are administered by the DIS. Pursuant to Article 36.1 DIS-Rules, the initial deposit, the Deposit and the Administrative Fees, as well as any later increases or decreases thereto, shall be calculated on the basis of the amount in dispute pursuant to the Schedule of Costs (Annex 2) in effect on the date of the commencement of the arbitration. Reference is made to the letter of the DIS of… which contains the calculation of the administrative fees and the deposit.

13. **Conduct of the Arbitration**

The Co-arbitrators have authorized the President to sign Procedural Order No. 1 as well as further procedural orders on behalf of the Arbitral Tribunal. In addition, the Co-arbitrators have authorized the President, in exceptional circumstances, to rule on individual procedural issues alone, see Article 14.3 DIS-Rules, subject to possible reconsideration of such decision by the full Arbitral Tribunal.

14. **Amendments and Modifications of the Procedure**

The Arbitral Tribunal may amend or supplement this Procedural Order No. 1 and the procedures for the conduct of this arbitration at any time by means of such further directions or procedural orders as the Arbitral Tribunal deems fit and appropriate, after consultation with the Parties.

Place of Arbitration:
Date:

On behalf of the Arbitral Tribunal
(President)
Annex to Procedural Order No. 1

DIS Arbitral Proceedings
DIS-SV
P1
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1. S, 2. SG

Procedural Timetable

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<tr>
<th>Date/Time Limit</th>
<th>Procedural Step</th>
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<tbody>
<tr>
<td></td>
<td>Case Management Conference</td>
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<tr>
<td></td>
<td>Claimant's Reply and Statement of Defense on Counterclaim</td>
</tr>
<tr>
<td></td>
<td>Respondents' Rejoinder and Reply to Counterclaim</td>
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<tr>
<td></td>
<td>Claimant's Rejoinder to Counterclaim</td>
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<td></td>
<td>Pre-Hearing Conference Call</td>
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<td>Evidentiary Hearing</td>
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