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**DIRECTOR-GENERAL**

ST/Directive/2015/2  
22 January 2015

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**DIRECTIVE**

**IRENA Provisional Arbitration Rules**

1. This Directive is promulgated with respect to the IRENA Provisional Arbitration Rules, adopted by the IRENA Assembly for the implementation of Staff Regulation 12.3.
2. IRENA Staff Regulation 12.3 provides for the establishment of an independent judicial or arbitral mechanism to which staff members dissatisfied with the outcome of the internal appeal process set forth in Staff Rule 112.2, or with decisions imposing disciplinary measures, may present a recourse against the validity of the final decision taken by the Director-General.
3. In order to give full effect to this provision, the Assembly, at its third session, adopted decision A/3/DC/7 on Administration of Justice at IRENA, in which it, inter alia, decided to establish an arbitration system for IRENA, and adopted the IRENA Provisional Arbitration Rules. At its fifth session, by decision A/5/DC/6, the Assembly approved amendments to Rule 14, paragraph 1 and Rule 15, paragraph 1 of these Provisional Arbitration Rules.
4. The revised text of the IRENA Provisional Arbitration Rules incorporating the amendments referred to above is contained in the Annex to the present directive.
5. The revised IRENA Provisional Arbitration Rules are effective as from 19 January 2015.

(Approved)  
Adnan Z. Amin  
*Director-General*

## **Annex**

### **IRENA Provisional Arbitration Rules**

#### **Section I. Introductory rules**

##### **Rule 1. Scope of application and time limits to initiate arbitration**

1. The IRENA Provisional Arbitration Rules (“the Rules”) shall govern any arbitration between an IRENA staff member or former staff member (“the claimant”) and the Agency pursuant to Article 12 of the Staff Regulations and Chapter 12 of the Staff Rules, in respect of final decisions taken by the Director-General:
  - a) After receiving advice from the Appeals Board with staff participation established pursuant to Staff Regulation 12.2 and Staff Rule 112.2;
  - b) After receiving advice from the Disciplinary Board with staff participation established pursuant to Staff Regulation 11.2;
  - c) After consideration of an appeal against the decision not to confirm an appointment upon a negative assessment of the performance and conduct of a staff member during the probationary period, pursuant to Staff Rule 112.3.
2. Claims in respect of a final decision taken by the Director-General must be initiated in accordance with Rule 3 within 90 days of the date on which the final decision was communicated to the claimant.

##### **Rule 2. Communication of notices and calculation of periods of time**

1. A notice, including a notification and any communication by or to the parties and by or to an arbitrator, may be transmitted by mail, courier service, facsimile, or electronically as a PDF attachment to an email. Use of any other electronic format is permitted only upon confirmation by the Secretary that it is acceptable.
2. If an address, including an e-mail address, has been designated by a party for purposes of arbitration proceedings, any notice shall be delivered to that party at that address, and if so delivered shall be deemed to have been received.
3. If, after reasonable efforts, delivery cannot be effected in accordance with paragraph 2, a notice or communication is deemed to have been received if it is sent to the addressee’s last-known habitual residence or mailing address by registered letter or any other means that provides a record of delivery or of attempted delivery.
4. A notice shall be deemed to have been received on the day it is delivered. A notice transmitted by electronic means is deemed to have been received on the day it is sent, allowing for time differences between the sender and the recipient.

5. For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

### **Rule 3. Notice of arbitration and registration fee**

1. A claimant seeking recourse to arbitration shall initiate the process by communicating a notice of arbitration to the Director-General and transmitting the applicable registration fee.
2. The notice of arbitration shall include the following:
  - a) The full name, address, email address, telephone number and any other relevant contact details of the claimant;
  - b) The full name, address, email address, telephone number and any other relevant contact details of the claimant's counsel or representative, if any;
  - c) A brief description of the claim, with copy of the final decision of the Director-General on which arbitration is requested;
  - d) The relief or remedy sought.
3. At the same time as the notice of arbitration, the claimant shall transmit a registration fee of \$250 for a claimant at the General Service level and \$500 for a claimant at the Professional level and above.

### **Rule 4. Response to the notice of arbitration**

1. Within 30 days of receipt of the notice of arbitration and registration fee, the Director-General or his representative shall communicate to the claimant a response to the notice of arbitration, which shall include:
  - a) The full name, address, email address, telephone number and any other relevant contact details of the representative of the Director-General;
  - b) A response to the claimant's description of the claim, and the relief or remedy sought;
  - c) The full text of the IRENA Arbitration Rules;
  - d) The full name, address, email address, telephone number and any other relevant contact details of the Secretary of the Arbitration Panel ("the Secretary");
  - e) The list of arbitrators constituting the Arbitration Panel, together with the curriculum vitae of each arbitrator, drawing the claimant's attention to Rule 10 of these Rules and requesting the claimant to take action within 15 days in accordance with that Rule.

2. The response to the notice of arbitration may also include a brief description of any claim or counterclaim that the Director-General or his representative (“the respondent”) will make against the claimant.

**Rule 5. Representation and assistance by counsel**

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

**Rule 6. The Secretary**

1. The Director-General shall appoint a Secretary who shall provide the necessary administrative support to the Arbitration Panel.
2. The Secretary shall discharge the duties set out in these Rules and shall work at the direction of the Arbitration Panel members. In particular, the Secretary shall transmit all documents and make all notifications required by these Rules and perform any other duties that are required by an arbitrator for the efficient functioning of the arbitration process.
3. The performance and conduct of the Secretary shall be evaluated at the conclusion of the process by the member of the Arbitration Panel having conducted an arbitration with the support of the Secretary. Such evaluation shall form part of the official performance record of the Secretary.

**Section II. Appointment of arbitrators**

**Rule 7. List of arbitrators on the Arbitration Panel**

1. The Director-General, after obtaining the views of the staff representative body, shall communicate to the Council for approval a list of at least six qualified candidates for inclusion in the Arbitration Panel.
2. In order to be considered for inclusion in Arbitration Panel, candidates shall have experience in handling and resolving employment cases, preferably in the context of an international organization, either as member of a judicial or arbitral body or as a senior manager in an international organization; be familiar with issues and functions relevant to an international organization; be of good character; and have a reputation as a knowledgeable, fair and impartial individual. Due account shall be taken of the need to ensure geographical and gender balance among Panel members.
3. The Council shall approve a list of at least five arbitrators, who will be appointed for a renewable term of two years.

## **Rule 8. Sole arbitrator**

Arbitration proceedings shall be conducted by a sole arbitrator.

## **Rule 9. Selection of arbitrator**

1. Within 15 days of receipt of the list of approved arbitrators, the claimant shall select one arbitrator and notify the Secretary of the name of the arbitrator he or she has selected.
2. If the claimant objects to all the arbitrators on the list he or she shall, within 15 days of receipt of the list of approved arbitrators, notify the Secretary, setting forth the reasons for declining to select any of the arbitrators on the approved list. The Secretary shall transmit such notification to the Chairperson of the Ethics Advisory Board, with a copy to the respondent who will have the opportunity to present written comments to the Ethics Advisory Board.
3. In cases where the claimant objects to all the arbitrators on the Arbitration Panel, the Ethics Advisory Board shall appoint an arbitrator from the approved list after considering the objections of the claimant and the written comments of the Director-General on those objections.
4. The decision of the Ethics Advisory Board on the appointment of an arbitrator shall be final and without further appeal.
5. In the event the claimant fails to respond within 15 days of receipt of the list of approved arbitrators, the Secretary shall send him or her a reminder, requesting an answer within seven days. In the absence of an answer, the claim shall be considered abandoned, without prejudice to the right to renew it upon submission of evidence of exceptional circumstances which, in the view of the Ethics Advisory Board, would justify the delay in responding and warrant a re-opening of the process.

## **Rule 10. Disclosure by arbitrator and request to replace the arbitrator**

1. When an arbitrator is approached in connection with his or her appointment to serve on a particular case, he or she shall disclose to the Chairperson of the Ethics Advisory Board any circumstances likely to give justifiable doubts as to his or her impartiality or independence. The Ethics Advisory Board shall consider the matter and decide whether the arbitrator should continue or be replaced by another arbitrator.
2. A party may request the Ethics Advisory Board to replace the arbitrator after his or her appointment only for reasons of which that party became aware after the appointment. Such a request must be made within 15 days of discovering the grounds on which the request is based, and set out the grounds on which the request is based. The Ethics Advisory Board shall consider the matter and decide whether the arbitrator should continue or be replaced by another arbitrator.

**Rule 11. Replacement of arbitrator**

1. In the event where the arbitrator has to be replaced prior to or during the course of the arbitral proceedings, a substitute arbitrator shall be selected by the claimant or the Ethics Advisory Board pursuant to the procedure set out in Rule 9.
2. If an arbitrator is replaced, the proceedings shall resume at the stage where the arbitrator who was replaced ceased to perform his or her functions, unless the new arbitrator decides otherwise.

**Rule 12. Exclusion of liability**

Save for intentional wrongdoing, arbitrators shall not be subject to any claim based on any act or omission in connection with the arbitration.

**Section III. Arbitral proceedings**

**Rule 13. General provisions**

1. Subject to these Rules, the arbitrator may conduct the arbitration in such manner as he or she considers appropriate, provided that the parties are treated with equality and fairness. The arbitrator shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the dispute between the parties. Procedural matters not covered by these Rules shall be dealt with by decision of the arbitrator in light of the facts of the case under consideration.
2. As soon as practicable after the arbitrator has been appointed and after inviting the parties to express their views, the arbitrator shall establish the timetable of the arbitration, including deadlines for submission of written pleadings. The arbitrator may, at any time, after inviting the parties to express their views, extend or abridge any period of time prescribed under these Rules or contained in the timetable.
3. All notices and communications to the arbitrator shall be sent to the Secretary and shall be copied to the other party. The Secretary shall transmit all notices and communications from the arbitrator to the parties. All communications to the parties shall be made at the same time, except as otherwise permitted by the arbitrator.
4. The place of arbitration shall normally be at the seat of the Agency in Abu Dhabi after conclusion of the exchange of written pleadings in accordance with Rules 14 to 17. The arbitrator may conduct the arbitration at another location if he or she deems this essential for resolution of the case and has given the Parties an opportunity to comment in writing on the relocation. The reasons for such relocation shall be explained in the award. Every effort shall be made to limit travel expenses by making maximum use of IRENA's teleconference and videoconference facilities.
5. No documents pertaining to any informal settlement efforts of the claim may be submitted by any party, and no mention of any such efforts shall be made in any written pleadings or oral arguments made before the arbitrator.

6. The arbitration shall be conducted in English. If a party produces or submits a document in another language, that party must provide at the same time an English translation, with a certification that the translation was prepared by a qualified translator.

**Rule 14. Statement of claim**

1. The claimant shall transmit a statement of claim in writing to the Secretary within the period of time defined by the timetable established by the arbitrator in accordance with Rule 13.2.
2. The statement of claim shall include the following:
  - a) The full name, address, email address, telephone number and any other relevant contact details of the claimant;
  - b) The full name, address, email address, telephone number and any other relevant contact details of the claimant's counsel, if any, specifying whether counsel will serve for purposes of representation or assistance;
  - c) A copy of the final decision of the Director-General being appealed;
  - d) A statement of the facts supporting the claim;
  - e) The points at issue, including an explanation of which staff regulations, staff rules or subsidiary rules are alleged not to have been observed by the Director-General;
  - f) A reasoned explanation for any request for a hearing;
  - g) The legal grounds or arguments supporting the claim;
  - h) The relief or remedy sought; and
  - i) A copy of all documents referred to by the claimant in the statement of claim, each being identified as "Claimant's Annex" on the top of the first page of each annex followed by the number of each annex;
3. The statement of claim and all annexes shall be transmitted to the Secretary in one original, signed by the claimant and his or her counsel or representative, if any, together with annexed documents in accordance with these Rules and three copies of the statement of claim and annexes. Alternatively, the signed statement of claim and all annexes may be electronically transmitted to the Secretary in accordance with Rule 2.1.
4. The claimant shall certify that all copies, including any copies electronically transmitted to the Secretary are true copies of the originals and that all translations have been provided by qualified translators.
5. After ascertaining that the requirements of this rule are complied with, the Secretary shall transmit a copy of the statement of claim and any annexes to the respondent. If the formal requirements of this rule are not fulfilled, the arbitrator may require the claimant to conform

the statement of claim and any annexes to the requirements of this rule within a specified time. Once the corrections are properly made. The Secretary shall transmit a copy of the statement of claim and any annexes to the respondent.

#### **Rule 15. Respondent's answer**

1. Within 30 days of the receipt of the statement of claim, the respondent shall communicate its answer in writing to the Secretary.
2. The respondent's answer shall contain the following:
  - a) The full name, address, email address, telephone number and any other relevant contact details of the representative of the Director-General;
  - b) A statement setting out facts and arguments in support of the decision being appealed;
  - c) A reasoned explanation for any request for a hearing;
  - d) The legal arguments supporting the answer;
  - e) The factual and legal grounds of any counterclaim against the claimant, and the relief or remedy sought;
  - f) A copy of all documents referred to by the respondent, unless already submitted by claimant, identified by the words "Respondent's Annex" on the top of the first page of each annex followed by the number of each annex;
3. The respondent's answer and all annexes shall be transmitted to the Secretary in one original, signed by the representative of the Director-General, together with annexed documents in accordance with these Rules and three copies of the answer and annexes. Alternatively, the signed answer and all annexes may be electronically transmitted to the Secretary in accordance with Rule 2.1.
4. The respondent shall certify that all copies, including any copies electronically transmitted to the Secretary, are true copies of the originals and that all translations have been provided by qualified translators.
5. After ascertaining that the requirements of this rule are complied with, the Secretary shall transmit a copy of the answer to the claimant. If the formal requirements of this rule are not fulfilled, the arbitrator may require the respondent to conform the answer to the requirements of this rule within a specified time. Once the corrections are properly made the Secretary shall transmit a copy of the answer to the claimant.

#### **Rule 16. Rejoinder and observations on rejoinder**

1. The claimant may, within 30 days of the date on which the answer is received by him or her, file a rejoinder of no more than five pages, commenting on the respondent's answer.



2. The respondent may, within 30 days of the date on which the rejoinder is received by him or her, file observations on the rejoinder of not more than three pages.
3. Any document referred to in the rejoinder and the observations on the rejoinder, as the case may be, shall be annexed thereto, unless already before the arbitrator. The number of the first annex to the rejoinder or observations on the rejoinder shall be the number following that given to the last annex submitted by the party concerned in the statement of claim or in the answer, as the case may be.
4. The rejoinder and the observations on the rejoinder, and any annexes thereto, shall be transmitted in an original and three copies to the Secretary. Alternatively, they may be electronically transmitted to the Secretary in accordance with Rule 2.1
5. The rejoinder and observations on the rejoinder shall be accompanied by a statement from the party submitting the document that all copies, including any copies electronically transmitted to the Secretary, are true copies of the originals and that all translations have been provided by qualified translators.
6. After ascertaining that the requirements of this rule are complied with, the Secretary shall transmit a copy of the rejoinder or observations on the rejoinder to the other party.
7. Subject to Rule 17, the written proceedings are closed after the observations on the rejoinder are filed or after the time limit for such filing has expired.

#### **Rule 17. Further written statements**

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

#### **Rule 18. Jurisdiction**

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

#### **Rule 19. Interim measures**

1. The arbitrator may, at the request of a party, grant interim measures.

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

**Rule 20. Evidence**

1. Each party shall have the burden of proving the facts relied on to support its statement of claim or answer.
2. The arbitrator may require the parties to produce documents or present other evidence within such a period of time as the arbitrator shall determine.
3. The arbitrator shall determine the admissibility, relevance, materiality and weight of the evidence offered.

**Rule 21. Hearings**

1. If requested in the statement of claim or the answer, the arbitrator may decide to hold a hearing and shall give the parties adequate advance notice of the date, time and place thereof. The hearing shall be limited to enabling the parties to present oral arguments in support of their pleadings.
2. Witnesses may be heard under the conditions and examined in the manner set by the arbitrator.
3. Hearings shall be held in public unless the arbitrator decides otherwise after considering the views of the parties. The arbitrator may require the retirement of any witness or witnesses during the testimony of other witnesses, except that a witness who is a party shall not, in principle, be asked to retire.
4. Whenever possible, the arbitrator shall conduct any hearing through means of telecommunication that do not require the physical presence of the parties, counsel or representatives, or witnesses at the hearing, such as videoconference or teleconference.
5. The arbitrator shall determine the sequence of any oral proceedings. The parties shall, however, retain the right to comment briefly on any statement to which they have not replied.
6. The arbitrator may, if he or she considers it necessary owing to exceptional circumstances, decide to reopen the hearing at any time before the award is made.

**Rule 22. Default**

1. If, within the period of time fixed by or pursuant to these Rules and without showing sufficient cause the claimant has failed to communicate a statement of claim, the arbitrator may issue an order for the termination of the arbitral proceedings.

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

#### **Rule 23. Waiver of right to object**

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

### **Section IV. The award**

#### **Rule 24. Applicable law**

1. The arbitrator shall apply the Staff Regulations and the Staff Rules of the Agency and any relevant subsidiary issuances creating rights and obligations for staff. The arbitrator may also apply general principles embodied in the IRENA Statute and the Staff Regulations adopted by the Assembly.
2. The arbitrator shall not decide as amiable compositeur or ex aequo et bono.

#### **Rule 25. Settlement or other grounds for termination of proceedings before the issuance of the award**

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

#### **Rule 26. Scope of award**

1. The arbitrator may order one or both of the following:
  - a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the arbitrator shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to the limits set out in sub-paragraph 1(b);

- b) Compensation, which shall not exceed the equivalent of two years' net base salary of the claimant.
2. The arbitrator shall not award exemplary or punitive damages.
3. If the contested administrative decision is based on an assessment of the efficiency or relative efficiency of the claimant, the arbitrator shall consider only whether the applicable procedures were followed and whether the decision was improperly motivated by prejudice or by some other extraneous factor.

**Rule 27. Form and implementation of the award**

1. The award shall be in writing. It shall be signed and dated by the arbitrator. The arbitrator shall state the reasons upon which the award is based.
2. The Secretary shall promptly transmit the signed award to the parties.
3. The award shall be final and binding on the parties.
4. The Director-General shall implement the award promptly and take any action that is required of the Agency by the award.
5. Unless the arbitrator orders otherwise, the Director-General shall make the award public on the Agency's web site. However, the name, personal details and functional title of the claimant shall be redacted.

**Rule 28. Interpretation of the award**

1. Within 30 days after the receipt of the award, a party, with notice to the other party, may request that the arbitrator give an interpretation of the award.
2. The interpretation shall be given in writing within 45 days after the receipt of the request. The interpretation shall form part of the award.

**Rule 29. Correction of the award**

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

## **Section V. Costs**

### **Rule 30. Fees and costs of arbitrator**

The fees and costs of the arbitrator, established in accordance with conditions of service for arbitrators approved by the Assembly, shall be borne by the Agency.

### **Rule 31. Support costs**

The Agency shall also bear the cost of the Secretary and necessary support services, including the provision of teleconferences or video conferences arranged at the request of the arbitrator.

### **Rule 32. Other costs**

1. Each party shall bear its own costs in relation to the arbitration, including the costs of its counsel or representative, travel-related costs, communications, office supplies, etc.
2. The arbitrator has authority to order the Agency in the award, giving reasons thereof, to pay reasonable costs incurred by the claimant, in whole or in part.
3. The arbitrator shall also decide in the award whether the registration fee required by Rule 3.3 should be refunded to the claimant, in whole or in part.
4. Should the arbitrator determine that a party has manifestly abused the arbitration process, he or she may award costs against that party in an amount fixed by the arbitrator.

## **Section VI. Final provisions**

### **Rule 33. Adoption and amendment of rules**

1. The present Rules are adopted as provisional until they are confirmed or finalized by the Assembly.
2. The Assembly may amend the Rules from time to time.
3. The Director-General shall draw to the attention of the Assembly every recommendation or comment by an Arbitrator on the need for amendment of the Rules.

### **Rule 34. Date of entry into force**

The Rules shall enter into force on the day following approval by the Assembly.