

DISPUTE BOARD RULES

In force as from 1 December 2021

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Article 1

Scope of Rules

1. This Rules apply to Dispute Adjudication Boards.
2. Dispute Boards established in accordance with the Dispute Board Rules of the EBA Mediation and Arbitration Center assists the Parties in avoiding or resolving their Disagreements and Disputes that may arise or have arisen out of a Contract.
3. The Parties shall consider the kind of Dispute Board that is appropriate for their Contract and specify in the Contract whether it is to be DAB, by including in the Contract, either the corresponding Dispute Board Model Clause, or any other specific term(s) which would have a similar effect.
4. Dispute Boards are not arbitral tribunals and their Conclusions are not enforceable in the same way as arbitral awards.

Article 2

Definitions

In these Rules, the following definitions apply:

- i. **“Applicable Law”** means the law applicable to the Contract.
- ii. **“Contract”** means the agreement of the Parties that incorporates or is the subject to the provisions for establishing a Dispute Board under the Rules.
- iii. **“Center”** or **“EBA Mac”** means the EBA Mediation and Arbitration Center, which was established in 2018 at the initiative of European Business Association (EBA Georgia).
- iv. **“Dispute”** means an assertion of a right or a claim by a Party that has been rejected by another Party and such rejection is rejected by the former.
- v. **“Dispute Board”** (“DB”) means a Dispute Adjudication Board (“DAB”), which is composed of one or three DB Members.
- vi. **“Party”** or **“Parties”** means a Party or the Parties to the Contract.
- vii. **“Referral”** means a written statement sent by either Party for the purpose of referring a dispute to the DB.
- viii. **“Reply”** means a written statement sent as a response to Response.
- ix. **“Response”** means a written statement sent in response to a Referral.
- x. **“Rules”** means the EBA Mac Dispute Board Rules in force at the date of the Contract (as stated in it or, if not stated, the date on which it has been executed by all Parties).

Article 3
Dispute Adjudication Boards (DABs)

1. The DAB may assist the Parties in the avoidance of Disputes and in resolving them through informal assistance. Any matter or disagreement arising under the Contract may be referred to the DAB by either Party.
2. The DAB shall issue a Decision in light of each referral in accordance with the presented rules. A Decision is binding on the Parties upon its receipt and the Parties shall comply with it without any delay. The Decision shall be enforceable and will stand unless superseded by agreement, arbitration or a judgment rendered by the courts.
3. Each Party shall submit its written acceptance or rejection of the Decision to the other Party and the DAB within 21 days of receipt of the Decision. The Party who is dissatisfied with a Decision and thus rejects it may specify the reasons for dissatisfaction, in absence of which the DAB may request the Party to provide the DAB and the other Party with brief reasons for the rejection.
4. If a Party fails to submit a written notice about the acceptance or rejection of the Decision to the other party or the DAB in a prescribed time frame, the Decision shall remain binding and shall become final.
5. If a Party rejects a Decision according to the procedure prescribed in the presented rules, then such Party may submit the Dispute to arbitration or litigation. Pending a ruling by the arbitral tribunal or the court, the Parties must comply with the Decision.
6. If either Party fails to comply with the Decision, then the other Party may submit the failure to comply with the Decision to arbitration or litigation.

Article 4
Appointment of the Dispute Board (DB)

1. The DB shall be established pursuant to the provisions of the Contract or, where the Contract does not determine the relevant procedure, the presented Rules shall be deemed to be incorporated by reference into the Contract.

2. The DB shall comprise either one or three suitably qualified DB Members, unless the Parties agree otherwise. If the number is not stated in the Contract and the Parties do not agree on it subsequently, the DB shall be composed of three members. However, the Center in view of the relevant circumstances and consultation with the parties, may decide that a sole DB member shall be appointed.
3. Where the Parties have agreed that the DB shall have a sole DB member, they shall jointly appoint the sole DB Member. If the Parties fail to appoint the sole DB Member within 30 days after signing the Contract or within 30 days after commencement of any performance under the Contract, whichever occurs earlier, or within any other time period agreed upon by the Parties, the sole DB Member shall be appointed pursuant to Article 4(5) of the Rules.
4. Where the Parties have agreed to have three DB Members, each Party shall appoint one Member. The third Member of the DB, who shall act as a chairperson, shall be jointly appointed by the two selected Members after obtaining the approval of the Parties. The chairperson shall be appointed within the time-period stated in the Contract, or where the Contract is silent on that, within 30 days after the appointment of the other Members or within any other time-period agreed upon by the Parties. In case of failure to appoint the chairperson within this time-period, the chairperson shall be appointed in accordance with Article 4(5) of the Rules.
5. If the Parties fail to establish a DB pursuant to Article 4(3), 4(4) of the Rules; or if the Parties fail to agree on a substitute DB Member; or the DB Members fail to agree on a chairperson following Article 4(4) of the Rules, the Center shall, after due consultation with the Parties, appoint the DB Member(s) as soon as practicable after the written request of any or all Parties. Such request may include the specific qualifications of the potential member, as well as identifying any conflicted individuals among the Center's panel of adjudicators. The Center's appointment shall be final and conclusive.
6. When appointing a DB Member, the Center shall act in light of the following procedure, unless the Parties agree that such procedure should not be used or unless according to the relevant circumstances the Center determines that the use of such procedure is not appropriate for the case:
 - a. The Center shall communicate to each of the Parties an identical list containing at least three prospective DB members;
 - b. Within 15 days after receipt of this list, each Party shall provide the Center with the list containing preferable DB member(s);
 - c. After the expiration of the respective 15 days, the Center shall appoint DB Member(s) from among the names approved on the list returned to it;

- d. If, for any reason, the appointment is not possible according to this procedure, the Center is entitled to exercise its discretion in appointing the DB Member(s). The Center's appointment shall be final and conclusive.
7. The appointment of a DB Member may be terminated by mutual agreement of both Parties, but not by either of the Parties acting alone. When a DB Member declines to act or is unable to act as a result of death, disability, resignation, termination of appointment or recusal, the Parties shall appoint a suitably qualified person to replace the DB Member. If parties are unable to appoint a substitute DB Member within 30 days from commencement of circumstances requiring the appointment of this member, then the Center shall appoint the substitute DB Member in accordance with Article 4(6) of the Rules.

Article 5

DB Member's Qualifications and Obligations

1. The Members undertake to carry out their obligations according with the Rules.
2. While appointing DB Members, a DB Member's expertise in the type of work or services subject to the Dispute and the Contract between the Parties must be considered. DB Members must have the expertise to comprehend and interpret the Contract, as well as excellent management and communications skills. DB Members must be fluent in the language defined in the Contract or as agreed by the Parties. When appointing a DB Member, the Center shall appoint from its panel of dispute board members. The Center shall strive to select DB Members with the appropriate skills for the project in question, while taking into consideration the potential DB Member's nationality, regional experience, residency, familiarity with the applicable law, qualifications, availability, language skills and relevant experience, etc. While making such appointments the Center shall endeavor to take into account any observations, requests and/or comments made by the Parties.
3. Unless otherwise agreed by the Parties or otherwise required by applicable law, any information obtained by a DB Member throughout the DB's activities, which is not in the public domain, shall be used by the DB Member only for the avoidance and settlement of Disputes and shall be considered and treated by the DB Member as strictly confidential. Such obligation shall also apply to the Center.
4. Unless otherwise agree in writing by the Parties, a DB Member shall not have acted or act in any arbitral, judicial or similar proceeding relating to the Contract.

Article 6

Impartiality and Independence

1. Any professional may be appointed as a Member of Dispute Board, regardless of being part of Center's panel of adjudicators, as long as they are capable, impartial, independent and have technical knowledge about the subject matter.
2. Every DB Member shall act in an impartial, independent and unbiased manner at the time of accepting an appointment to serve and must remain so until his or her appointment is terminated.
3. The following situations preclude a person from serving as DAB Member:
 - a. the prospective DB Member is a manager, director or member of the supervisory board of one of the Parties, or has a similar controlling influence in one of the Parties;
 - b. the prospective DB Member has a significant financial or personal interest in one of the Parties or in the matter at stake;
 - c. the prospective DB Member regularly advises one of the Parties or an affiliate of one of the Parties, or the prospective DB Member or their firm derives a significant financial income therefrom;
4. The situations listed in this Article 6 (3) are non-exhaustive examples of specific situations which give rise to justifiable doubts as to a person's impartiality and independence. Disclosure of any of these situations cannot cure the objective conflict of interest.
5. At the time of accepting an appointment to act as DB Member, each prospective DB Member shall provide a written statement to the Parties declaring capacity, impartiality and independence that there is no conflict of interest and disclose any facts or circumstances which in the consideration of the Parties may give rise to justifiable doubts as to his/her impartiality and independence.
6. Each Member shall also disclose to the Parties and the other DB Members promptly any such facts or circumstances which arise, or of which the Member becomes aware, after appointment.
7. DB Member may be challenged, within 14 days on the grounds of conflict(s) of interest or circumstances giving rise to justifiable doubts as to the DB Member's lack of impartiality or independence, or a proven failure to possess the qualifications agreed upon by the parties.

8. Any party may challenge DB member nominated by it, or in whose nomination it has participated, only for reasons of which it becomes aware after the nomination has been made.
9. If a Party does not notify an express objection in writing to the Center within that period of 14 days after becoming aware of the facts surrounding this objection, this Party is deemed to have waived its right to raise this objection at a later stage of the proceedings.
10. If the challenged DB Member does not withdraw from his office or the other party does not agree to the challenge within the time-limit fixed, the challenging party may apply to the Center within two weeks for a decision. The Center shall finally decide the challenge after having given the challenged Dispute Board Member as well as any other Dispute Board Members and the other Party an opportunity to comment on the challenge.
11. If a Dispute Board Member is successfully challenged, that Dispute Board Member's agreement with the Parties shall be terminated forthwith. The resulting vacancy shall be filled following the procedure used to appoint the challenged Dispute Board Member.

Article 7

Informal Assistance with Disagreements

1. Upon the joint request of the Parties, the DB may informally assist the Parties in the avoidance of Disputes by providing an informal advisory opinion. Such informal assistance may occur during any meeting or site visit or through any other form that shall be agreed with the Parties. The Parties are not bound to act upon any informal advice given by the DB.
2. The DB may, on its own initiative, raise an issue with the Parties in order to establish a dialogue between them and to clarify matters. The Parties have the right to stop the DB's initiative if they regard it as unnecessary, provided that they notify the DB promptly, jointly and in writing.
3. If the DB is required to issue a Decision regarding any matter on which it has earlier provided an informal advisory opinion, the DB shall not be bound any views, whether expressed orally or in writing, which it may have given during the course of its informal advisory opinion.

Article 8
Formal Referral

1. The Parties shall comply with any contractual requirements as provided for by the Contract.
2. A Party may, at any time, refer a Dispute to the DB by submitting a Referral to the DB and simultaneously to the other Party.
3. The Referral shall comprise a summary of the Dispute in question, a concise and clear list of issues submitted to the DB for Decision and a statement of the referring Party's position including any relevant facts, contractual basis and law, as well as the relief sought. The Referral shall include copies of all documents relied on to support the position stated.
4. Within 21 days after the Referral receipts, the other Party shall submit its Response to the referring Party and the DB. The Response shall include copies of all documents relied on to support the position stated and a statement of any relief sought.
5. Subject to the DB granting permission and within the time limit prescribed by the DB, the referring Party may submit a Reply to the other Party and simultaneously the DB.
6. At any time, the DB may request the Parties to provide any additional submissions or additional information or documents in writing.
7. Notwithstanding the DB's assistance, the Parties remain free to settle the Dispute at any time.

Article 9
Powers of the Dispute Board

1. The proceedings before the DB shall be governed by the Rules and, where the Rules do not regulate specific issues, by any rules which the Parties, or if the former is unable to agree, the DB may settle on. In the absence of an agreement of the Parties the DB is empowered, *inter alia*, to:
 - a. establish the procedure to be implemented to issue a Decision;
 - b. determine the DB's own jurisdiction, and as to the scope of a Dispute referred to it;
 - c. require the Parties to provide any documents that the DB deems necessary to fulfil its obligations;

- d. call meetings, site visit or hearings, and conduct hearings as it deems fit, being bound only by the Rules and the Contract;
 - e. decide on all procedural matters arising during meetings, site visits and hearings;
 - f. appoint one or more experts, with the agreement of the Parties;
 - g. subject to the Parties preliminary agreement issue Recommendation on interim measures and the best possible means of Decision enforcement;
 - h. implement any sequence when questioning the Parties, their representatives and any witnesses that the Parties may call;
 - i. determine the language of the proceedings, taking into consideration the Parties' respective views, the language of the Contract and all relevant circumstances;
 - j. issue a Decision even if a Party fails to comply with a request of the DB;
 - k. take any measures necessary for it to fulfill its function as a DB;
2. If there are more than two Parties to the Contract, the application of the Rules may be adapted, as appropriate, to the multiparty situation by agreement of all of the parties, or if such agreement is impossible, by the DB.

Article 10

Conduct of Hearings

1. Unless the DB orders otherwise, hearings shall be arranged within 14 days of the date on which DB Member(s) receives the Response.
2. If a Party requests a document-only procedure, the DB should consult the Parties and seek their agreement to that procedure before proceeding on a documents-only basis.
3. When a documents-only procedure is being used, the DB should give a clear direction to the Parties as to the various steps that need to be followed so as to enable the DB to decide the issues subject to that procedure on documents alone.
4. Where a documents-only procedure is being used, the same Rules apply with due consideration to the specificity of the procedure selected.
5. If a Party refuses or fails to attend DB procedure or any stage thereof, the DB may nevertheless proceed with the hearing if the absent Party was properly notified about the hearing.

6. If a Member of a DB of three members is unable to attend a hearing, with consultation with the Parties and obtaining their written approval the DB may arrange a hearing in the absence of that DB Member.
7. The DB shall:
 - a. be fully responsible for the conduct of the respective hearing(s);
 - b. act fairly and impartially and ensure that each Party has a reasonable opportunity to present its case;
 - c. not express any opinions during a hearing concerning the merits of arguments put forward by the Parties.
8. The DB may hold meetings at any location it considers appropriate, as well as through remote communication or online means, before rendering its Decision.
9. The DB shall avoid unnecessary delay or expense and adopt procedures suitable to the value, nature and complexity of the Dispute.

Article 11

Meetings and Site Visits

1. At the beginning of its activities the DB, in consultation with the Parties, shall establish a schedule of meetings and, if relevant to the Contract site visits.
2. The DB shall decide if the site visits are relevant to the Contract and shall specify the schedule of a site visit. The DB shall consult with the Parties while determining the schedule.
3. The purpose of site visits is to enable the DB Members to witness the performance of the Contract, site conditions, progress of the work and any actual or potential disagreements.
4. Meetings can be held at any location or by telephone or video conference, as agreed by the Parties and the DB. If they do not agree on the potential venue or means to hold a meeting, such matters shall be decided by the DB after Consultation with the Parties.
5. Site visits shall be attended by the Parties and the DB, who may engage in informal conversations with any of the attendees, in the presence of both Parties, about the performance or the Contract and any pending claims. If appropriate, site visits may be combined with hearings of Disputes.

6. If site visits are conducted, the DB shall prepare a summary report within 14 days, unless otherwise agreed by the Parties, after every meeting or site visit and provide a copy of that report to each Party.

Article 12

Written Notifications or Communications; Time Limits

1. All written notifications and communications from a Party to the DB or from the DB to the Parties, together with any enclosures and attachments, shall be communicated simultaneously to all Parties and DB Members at the address on file for each of them.
2. Written notifications or communications shall be sent in the manner agreed between the Parties and the DB or in any manner that provides the sender with a record of the sending thereof.
3. All written notifications or communications from a Party to the Center shall be communicated simultaneously to all Parties at the address on file for each Party.
4. A notification or communication shall be deemed to have made on the date that it was received by the intended recipient or by its representative; or, if made by e-mail, on the day of sending it to the correct e-mail address(es).
5. Periods if the time specified in or fixed under the Rules shall:
 - a. start to run on the day following the date a notification or communication is deemed to have been made pursuant to the preceding paragraph. When the day next following such date is an official holiday or non-business day in the country in which the notification or communication is deemed to have been made, the period of time shall commence on the first following business day;
 - b. include official holidays and non-business days; unless the last day of the period of time is an official holiday or a non-business day in the country where the addressee(s) are based, the period of time shall then expire at the close of business of the first following business day;

Article 13

Decisions

1. The DB shall render the Decision on the case in question within 60 days after receiving the Referral. Subject to the agreement of the Parties and depending on the complexity and nature of the Dispute, the DM may extend this time limit that shall not exceed 30 days.
2. The Decision issued by the DB must indicate the date on which it is rendered, the DB's findings, observations and the reasons upon which they are based.
3. When the DB comprises three DB Members, the DB shall endeavor to achieve unanimity. If this cannot be achieved, a Decision is rendered by a majority of the DB Members. If there is no majority, the Conclusion shall be rendered by the chairperson of the DB alone. Any DB Member who disagrees with the issued Decision will give the reasons for such disagreement in a separate report that shall not form a part of the Decision, but will be communicated with the Parties.
4. The DB may correct a clerical, typographical or computational error, or/and any errors of a similar and/or identical nature, contained in a Decision, on its own initiative within 7 days after the date of rendering the decision. After such correction, the updated version of the Decision must be delivered to the Parties in writing within 7 days.
5. Within 14 days after the receipt of the Decision, any Party is entitled to apply to the DB for the correction of a clerical, typographical or/and computational error and/or any errors of a similar and/or identical nature, and/or for an interpretation of the Decision. Within 7 days after receiving such application, the other Party must submit any observations it may have. Within 21 days after the expiry of the deadline for comments, unless its time limit was extended by the Parties' agreement, the DB shall issue any required correction or interpretation of the relevant Decision. Extension of the deadline set for providing respective comments shall not normally exceed 7 days.
6. In the event of the DB issuing a correction or interpretation of the Decision, all time limits associated with the Decision shall recommence from receipt by the Parties of the correction or interpretation of the Decision.
7. Unless otherwise agreed by the Parties, Decisions rendered by DB and any separate written document issued pursuant to Article 13 shall be admissible as evidence in any subsequent arbitral or judicial proceedings.

Article 14
Recommendations on Interim Measures

1. The Parties may agree to authorize DAB to issue Recommendation on interim measures and the most effective means to Decision enforcement. The rendered Recommendation shall not be binding, and each Party may refuse to comply by giving a written opinion expressing its dissatisfaction with a recommendation.
2. When issuing a recommendation, DAB shall be obliged to calculate the costs that are related to complying with the recommendation. The costs shall be determined rationally and with regards to the best interests of the Contract. The refusal to cover the costs is equivalent to a refusal to comply with the recommendation, in which case the Party must provide a written opinion that specifies the reasons for refusal.

Article 15
Remuneration

1. The fees and expenses of the DB Members shall be shared equally by the Parties.
2. The terms and rate of compensation for each of the DB Members shall be mutually agreed between the Parties and the DB Member(s).
3. Unless otherwise agreed between the Parties and the DB Members, the Parties shall reimburse all reasonable expenses incurred by a DB Member while carrying out obligations in respect of the DB including, but not limited to:
 - a. air travel expenses between the DB Member's place of residence and the place of any site visit, hearing(s) or deliberation(s);
 - b. expenses incurred for hotels and meals when travelling;
 - c. expenses for ground transport, courier services, photocopying, printing, postage, visas (if applicable), etc.
4. If the Parties and a DB Member fail to agree on the Member's remuneration, or if one Party challenges any part of the DB's remuneration, then the Center shall, after due consultation with the Parties, within 28 days of the written request submitted by one or both Parties, decide what the reasonable remuneration of each DB Member shall be. The Center's decision shall be conclusive and binding.

5. If one Party fails to pay its share of the fees and expenses of a DB Member when due, the other Party, shall pay the outstanding amount. The Party making such payment shall be entitled to reimbursement from the non-paying Party of all such amounts paid.

Article 16

Administrative expenses of the EBA Mac

1. Unless the Parties agree otherwise the Parties shall equally bear the costs for the appointment of one DB member by the EBA Mediation and Arbitration Center. Each request for the appointment of a DB member must be accompanied by a payment of 2,000 USD (including taxes provided by law), which include the registration fee and Center's administration charge. The referring Party is obliged to pay the mentioned fee in full. The Party making such payment shall be entitled to reimbursement from the other Party/Parties. This payment is non-refundable.
2. Each request for a decision on the remuneration of a DB Member pursuant to Article 15 (4) of these Rules must be accompanied by a non-refundable of 1,500 USD (including taxes provided by law). The amount shall represent the total cost for the decision by the Center. The Center shall not proceed with the decision unless the specified payment has been received. The applying Party is obliged to pay the mentioned fee in full. The Party making such payment shall be entitled to reimbursement from the other Party/Parties.
3. Each application to the Center to the Center for removal of a DB Member shall be accompanied by a non-refundable fee of 1,000 USD (including taxes provided by law). This amount shall represent the total cost for the decision by the Center. The Center shall not proceed with the decision unless the specified payment has been received. The applying Party is obliged to pay the mentioned fee in full. The Party making such payment shall be entitled to reimbursement from the other Party/Parties.
4. The administrative costs do not include the board members' fees and their costs related to the case, The remuneration of the board members shall be determined by the agreement between DB Members and parties.

Annex I
Dispute Adjudication Board Model Clause

I

1. The Parties hereby agree to establish a Dispute Adjudication Board (“DAB”) in accordance with, and subject to, Dispute Board Rules of the EBA Mediation and Arbitration Center (the “Rules”).
2. A party to this contract ("the Referring Party") may at any time give written notice ("the Notice") to the other party of its intention to refer dispute arising out of or in connection with this contract to DAB.
3. Where parties are unable to upon the nomination of the DB members within 2 days of the Notice being given the Referring Party shall immediately apply to the Center for the appointment. Nomination shall be communicated to the parties within 5 days of receipt of the application.
4. The DAB shall reach a decision within 60 days of referral or such longer period as is agreed by the parties after the dispute has been referred. Subject to the agreement of the Parties and depending on the complexity and nature of the Dispute, the DM may extend this time limit that shall not exceed 30 days.
5. The decision of the DAB is binding until the dispute is finally determined by legal proceedings, by arbitration (if the contract provides for arbitration) or by agreement.

II

1. The Parties hereby agree that the establishment of a Dispute Adjudication Board, including but not limited to the appointment of DB Members, shall be executed in accordance with the EBA Mediation and Arbitration Center Rules (the “Rules”)
2. A party to this contract ("the Referring Party") may at any time give written notice ("the Notice") to the other party of its intention to refer dispute arising out of or in connection with this contract to DAB.
8. The DAB shall reach a decision within 60 days of referral or such longer period as is agreed by the parties after the dispute has been referred. Subject to the agreement of the Parties and

depending on the complexity and nature of the Dispute, the DM may extend this time limit that shall not exceed 30 days.

3. The decision of the DAB is binding until the dispute is finally determined by legal proceedings, by arbitration (if the contract provides for arbitration) or by agreement.