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**2017 Amendment to the 2014 MARC Arbitration Rules**

**Effective as from 2 October 2017**

The MARC Arbitration Rules 2014 (the “Rules”) are hereby amended as follows.

The following functions under the Rules shall from the date hereof be carried out by the MARC Court (the “Court”):

- a) Article 6: *Prima facie* decisions on MARC’s jurisdiction to accept a case;
- b) Article 12: Decisions as to the number of arbitrators where the arbitration agreement is silent as to the number;
- c) Article 13: Appointment of one or more arbitrators in the absence of agreement between the parties or where the agreed appointment procedure fails;
- d) Article 17: Decisions on challenges raised against arbitrators;
- e) Article 18: Decisions on an arbitrator’s inability or failure to act;
- f) Article 18: Replacement of arbitrators;
- g) Article 34: Interpretation of the Rules; and
- h) Scale of Costs: Fixing of arbitrators’ fees and administrative costs where the amount in dispute exceeds MUR 500,000,000.

In addition, the Court shall be empowered to carry out the following functions:

- i) Responding to issues raised by the MARC Permanent Secretariat in relation to draft awards; and
- j) Decisions and / or advice on other issues related to procedure and case management as may be submitted by the MARC Permanent Secretariat.

The Court shall be bound by the Constitution of the Court as annexed hereto.

## Annex 1

### Mauritius Chamber of Commerce and Industry (MCCI) Mediation and Arbitration Center (MARC)

#### Constitution of the MARC Court

Effective Date [2 October 2017]

MARC (formerly known as the Permanent Court of Arbitration of the MCCI) was established in 1996 as the alternative dispute resolution arm of MCCI, a non-profit making, non-governmental institution established in 1850 representing the private sector in Mauritius.

MARC hereby establishes a Court consisting of international arbitration experts (hereafter referred to as the “MARC Court” or “Court”) primarily to exercise its powers under the MARC Arbitration Rules.

Every member of the MARC Court shall accept and comply with the constitution of the Court, as set out below.

#### Functions of the MARC Court

1. The Court’s primary function is to exercise its powers in accordance with the MARC Arbitration Rules. The Court may perform additional functions as may be agreed from time to time with MARC.
2. The Court’s specific tasks are the following:
  - a) Article 6: *Prima facie* decisions on MARC’s jurisdiction to accept a case;
  - b) Article 12: Decisions as to the number of arbitrators where the arbitration agreement is silent as to the number;
  - c) Article 13: Appointment of one or more arbitrators in the absence of agreement between the parties or where the agreed appointment procedure fails;
  - d) Article 17: Decisions on challenges raised against arbitrators;
  - e) Article 18: Decisions on an arbitrator’s inability or failure to act;
  - f) Article 18: Replacement of arbitrators;
  - g) Article 34: Interpretation of the Rules; and

- h) Scale of Costs: Fixing of arbitrators' fees and administrative costs where the amount in dispute exceeds MUR 500,000,000.

In addition, the Court shall be empowered to carry out the following functions:

- i) Responding to issues raised by the MARC Permanent Secretariat in relation to draft awards; and
  - j) Decisions and / or advice on other issues related to procedure and case management as may be submitted by the MARC Permanent Secretariat.
3. At all times, the Court shall act independently of the MARC Permanent Secretariat and MCCI.
  4. No Court member may be appointed as arbitrator by the Court. A member appointed as arbitrator by one or more parties to an arbitration must comply with the provisions of paragraph [14] below.

#### **Decisions of the Court**

5. Decisions of the Court in exercising its functions under the MARC Arbitration Rules shall be taken during committee sessions by simple majority vote. At least three Court members shall constitute a quorum. The President of the Court shall select the members constituting each committee and shall chair each committee session unless he or she is unavailable or excused as described in paragraph [14] below.
6. Committee sessions may be held through any means of communication including emails and need not be held in person. Urgent decisions may be made by telephone conference or video conference. Documents should be submitted to committee members at least 24 hours before the committee session by the MARC Permanent Secretariat and / or the Court's rapporteur.
7. The MARC Permanent Secretariat shall render administrative and secretarial assistance to the Court for each committee session, and shall maintain minutes and records of each committee session. The minutes of each committee session must be approved by the chairperson of that committee. The same applies for any meetings of the Court, as described below.
8. The MARC Permanent Secretariat shall notify the Court's decisions to the parties and arbitrators. Decisions made with respect to an arbitration shall be communicated solely by the Permanent Secretariat to the parties and arbitrators in that particular arbitration.

9. The Court's rapporteur shall be selected by the President and need not be a member of the Permanent Secretariat. The rapporteur shall respect the strictly confidential nature of the Court's work.
10. The Court may meet to discuss other matters when convened by the President, by using any means of communication including email. At least three Court members shall constitute a quorum. Decisions shall be made by simple majority vote. A member of the MARC Permanent Secretariat may be invited to attend such meetings on an *ex officio* basis.

### **Confidentiality**

11. The work of the Court and any decisions made by the Court are strictly confidential.
12. Committee sessions of the Court are open only to its members, the Court's rapporteur and the MARC Permanent Secretariat.
13. Any documents drawn up for the purpose of the Court's work shall only be communicated to its members, the Court's rapporteur and the MARC Permanent Secretariat.
14. Any Court member who may have a conflict of interest or may be involved in any arbitration conducted under the MARC Arbitration Rules shall immediately inform the MARC Permanent Secretariat and the President of the Court and shall not receive any information in respect of the arbitration. The Court member shall be excused from participating in committee sessions where the arbitration is discussed. If the President of the Court is so excused, he or she shall designate a Court member to act in his or her place.

### **Appointment and replacement of Court members**

15. There shall be a maximum of thirteen Court members at any given time, including the President. The members may originate from different geographic regions and need not be Mauritian citizens or resident in Mauritius.
16. No Court member may be employed by or receive any funding from MCCI or MARC, whether directly or indirectly, nor may any Court member serve concurrently on any other body established by MARC or MCCI including the MARC Advisory Board and the MARC Permanent Secretariat, save in relation to the reimbursement of reasonable expenses agreed in advance.

17. Subject to the following paragraph, each member shall serve a three-year term, which may be renewed for further periods of three years with the consent of MARC.
18. At any time during his or her term, a member may be removed from the Court for unethical conduct or any conduct which may bring the Court into disrepute. The President or MARC may convene a meeting to discuss the matter, which shall be held in the manner described at paragraph [10]. Any decision of the Court with respect to the removal of a member shall be made by simple majority vote, the outcome of which shall be communicated to MARC. The final decision on the removal of a member shall be made by MARC.
19. Save where a member is removed as set out above, each outgoing member may propose his or her successor, who may originate from the same geographic region, to the other members of the Court for discussion. Decisions on prospective members shall be made by simple majority vote during meetings held in the manner described at paragraph [10] above. The names of successful candidates will be communicated to MARC.

#### **Limitation of liability**

20. Neither the Court nor any of its members shall be liable to any person for any act or omission in connection with the discharge or purported discharge of any functions (whether in respect of any arbitration or otherwise) submitted to the Court, except to the extent such limitation of liability is prohibited by applicable law.

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