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Swiss Real Estate Association SVIT  
(SVIT Switzerland)



# Rules of Arbitration for the Swiss Real Estate Industry (SVIT-Arbitral Tribunal)

In consideration of the charter of the Swiss Real Estate Association (SVIT Switzerland), dated  
October 24, 2003

In force since January 1, 2011

*For the sake of linguistic clarity, only the masculine form is used, but the female form is  
always included as well.*

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## **Preliminary Statements**

The present Rules of Arbitration comply with the following legal basis:

- Federal Act on Civil Procedure of December 4, 1947
- Swiss Civil Procedure Code
- Federal Act on International Private Law of December 18, 1987

This English version is only a unofficial translation of the original German version of the Rules of Arbitration for the Swiss Real Estate Industry (SVIT-Arbitral Tribunal). In case of inconsistencies between the texts, the German version always prevails.

## **Model Arbitration Clause**

“Herewith, the parties agree that any controversy arising out of or in connection with this agreement, including any disputes regarding the validity, legal effectiveness, alteration or termination thereof, as well as any legal relations or legal effects directly or indirectly stemming from this agreement shall be adjudicated by the Arbitral Tribunal for the Swiss Real Estate Industry.

Excluding ordinary state courts, the arbitral tribunal shall apply the Rules of Arbitration for the Swiss Real Estate Industry (SVIT-Arbitral Tribunal) to resolve such controversies.

Subject to a different agreement among the parties, up to CHF 100,000 the arbitral tribunal shall be established as a one-member arbitral tribunal, exceeding that amount in dispute a three-member arbitral tribunal shall be competent. The decision of the arbitral tribunal shall be final.”

**Table of Contents**

- Part 1: Basis of the Arbitral Proceedings .....5
- I. The Arbitral Tribunal of the Swiss Real Estate Industry.....5
  - Art. 1 Scope of Application .....5
  - Art. 2 Arbitration Agreement.....5
- II. Organization of the Arbitral Tribunal of the Swiss Real Estate Industry.....5
  - Art. 3 Composition of the Arbitral Tribunal.....5
  - Art. 4 Designation of the Arbitrator of the One-Member Arbitral Tribunal.....6
  - Art. 5 Designation of the Co-Arbitrators and the Presiding Arbitrator of the Three-Member Arbitral Tribunal.....6
  - Art. 6 Acceptance of Designation .....6
  - Art. 7 Secretary .....7
  - Art. 8 Seat and Constitution of the Arbitral Tribunal.....7
  - Art. 9 Tenure .....7
- III. Challenge, Removal and Replacement of Arbitrators.....8
  - Art. 10 Binding Challenging Reasons .....8
  - Art. 11 Challenge Procedure .....8
  - Art. 12 Removal .....8
  - Art. 13 Replacement of an Arbitrator .....8
- Part 2: Arbitral Proceedings.....9
- I. General Provisions .....9
  - Art. 14 Litispendence.....9
  - Art. 15 Applicable Procedure.....9
  - Art. 16 Opportunity of Being Heard.....9
  - Art. 17 Time-Limits .....10
  - Art. 18 Official Language.....10
  - Art. 19 Minutes.....10
  - Art. 20 Advance Payment.....11
  - Art. 21 Provisional Measures.....11
  - Art. 22 Joinder of Parties, Joinder of Actions and Participation of Third Parties12
- II. Arbitral Proceedings .....12
  - Art. 23 Individual Procedural Steps .....12
- III. Trial of Conciliation .....13
  - Art. 24 Competence for Conciliation .....13
- IV. Correspondence .....13
  - Art. 25 Basic Provisions .....13
  - Art. 26 Service and Number of Briefs .....13
  - Art. 27 Statement of Claim .....14
  - Art. 28 Statement of Defense .....14
  - Art. 29 Counterclaim.....14
  - Art. 30 Belated Submissions .....15
- V. Suspension of the Proceedings in Case of an Offset-Defense .....15
  - Art. 31 Offset-Defense.....15
- VI. Procedures for the Introduction of Evidence .....15
  - Art. 32 General Provisions.....15
  - Art. 33 Sources of Evidence .....16
  - Art. 34 Consideration of Evidence .....16
  - Art. 35 Documents .....16
  - Art. 36 Written Information.....16
  - Art. 37 Witnesses .....17
  - Art. 38 Inspection .....18
  - Art. 39 Expert Witnesses.....18
  - Art. 40 Translators.....18

|  |    |
|--|----|
| Art. 41 Party Questioning .....                                      | 18 |
| Art. 42 Precautionary Taking of Evidence.....                        | 19 |
| Art. 43 Asserting Procedural Errors .....                            | 19 |
| VII. Closure of Proceedings .....                                    | 19 |
| Art. 44 Optional Closing Statement .....                             | 19 |
| Art. 45 Award and its Deliberation .....                             | 20 |
| Art. 46 Applicable Law.....  | 20 |
| Art. 47 Form of the Award .....                                      | 20 |
| Art. 48 Interlocutory and Partial Awards .....                       | 21 |
| Art. 49 Decision on Costs.....                                       | 21 |
| Art. 50 Rendering the Award .....                                    | 21 |
| Art. 51 Effect of the Award and Confirmation Procedure .....         | 21 |
| Art. 52 Correction, Explanation and Supplementary of the Award ..... | 22 |
| Art. 53 Remedies .....   | 22 |
| Art. 54 Confidentiality and Publication of the award.....            | 22 |
| Art. 55 Exclusion of Liability.....                                  | 23 |

## **Part 1: Basis of the Arbitral Proceedings**

### **I. The Arbitral Tribunal of the Swiss Real Estate Industry (SVIT-Arbitral Tribunal)**

#### **Art. 1 Scope of Application**

<sup>1</sup>These Rules of Arbitration shall be applicable to proceedings on disputes in the field of the real estate industry, which may be subject to arbitration and which may have been chosen in an arbitration agreement (Article 2).

<sup>2</sup>These Rules of Arbitration entered into force on January 1, 2005 and shall apply to all arbitral proceedings in the version valid at the point in time of the litispence of the arbitration matter (Art. 14).

<sup>3</sup>The management of SVIT Switzerland offers the involved parties a short advisory conference about the various possible manners to proceed under these Rules of Arbitration.

#### **Art. 2 Arbitration Agreement**

<sup>1</sup>The arbitral tribunal establishes its jurisdiction by an arbitration agreement. This agreement must be concluded in writing or other means of communication which allow proof of the agreement by text. The arbitration agreement is constituted either in the form of an arbitration clause or in the form of an arbitration contract.

<sup>2</sup>An arbitration clause forms part of a contract and stipulates that all or determined prospective legal disputes that arise from this contractual relationship shall be submitted to the arbitral tribunal to decide.

<sup>3</sup>An arbitration contract is an independent stipulate on that the parties establish an arbitral tribunal to decide a present dispute on a determined legal issue.

### **II. Organization of the Arbitral Tribunal of the Swiss Real Estate Industry**

#### **Art. 3 Composition of the Arbitral Tribunal**

<sup>1</sup>An arbitral tribunal consists either of a sole arbitrator (one-member arbitral tribunal) or of two co-arbitrators and a presiding arbitrator (three-member arbitral tribunal).

<sup>2</sup>The Management of SVIT Switzerland provides to the parties without obligation a number of potential arbitrators with the professional and procedural knowledge necessarily required.

<sup>3</sup>Up to the amount of CHF 100,000 in dispute, a one-member arbitral tribunal is presumably competent. For a higher amount in dispute, a three-member arbitral tribunal is presumably competent. The parties may rebut these presumptions through a written statement.

<sup>4</sup>In case of a multi-party arbitral proceedings and if the parties, pursuant to Article 4 or Article 5 do not stipulate the composition of the arbitral tribunal, the management of SVIT Switzerland shall appoint all members of the arbitral tribunal.

<sup>5</sup>In the course of the appointment of the arbitral tribunal no party shall be given preferential treatment.

#### **Art. 4 Designation of the Arbitrator of the One-Member Arbitral Tribunal**

<sup>1</sup>The parties are free to choose the sole arbitrator on their own and designate him by a joint written statement.

<sup>2</sup>If the parties have not designated a sole arbitrator by mutual consent within a thirty-day time-limit after one party's request to do so, the management of SVIT Switzerland shall appoint the sole arbitrator at one party's request.

#### **Art. 5 Designation of the Co-Arbitrators and the Presiding Arbitrator of the Three-Member Arbitral Tribunal**

<sup>1</sup>Either party shall designate one arbitrator; the two appointed arbitrators shall jointly designate the presiding arbitrator.

<sup>2</sup>After the claimant's designation and notification of the arbitrator to the respondent, the claimant may demand that the respondent designates an arbitrator within a subsequent thirty-day time-limit.

<sup>3</sup>At one party's request, the management of SVIT Switzerland shall set a thirty-day time-limit for both co-arbitrators to designate a presiding arbitrator.

<sup>4</sup>If the respondent fails to designate an arbitrator within the set time-limit or if the co-arbitrators fail to designate a presiding arbitrator within the set period, at the request of one party, the management of SVIT Switzerland shall make the appointment.

#### **Art. 6 Acceptance of Designation**

<sup>1</sup>As soon as all arbitrators have accepted their designation in writing, the arbitral tribunal is constituted.

<sup>2</sup>By accepting their designation, the arbitrators undertake to decide the legal dispute at issue to the best of their belief, in full independence and neutrality. In addition,

they undertake to efficiently conduct the arbitral proceedings and to maintain confidentiality of all privy information obtained in connection with their arbitral function.

<sup>3</sup>The arbitrators are not representatives of the party by whom they have been designated.

#### **Art. 7 Secretary**

The arbitral tribunal may as needed in an arbitration matter designate a secretary to work with the arbitral tribunal. The management of SVIT Switzerland may propose to the arbitral tribunal a secretary versed in law. The provisions about arbitrators apply with equal force to the secretary.

#### **Art. 8 Seat and Constitution of the Arbitral Tribunal**

<sup>1</sup>If the parties have not determined another seat for the arbitral tribunal, the seat of the arbitration shall be in Zurich (at the seat of SVIT Switzerland).

<sup>2</sup>Hearings may be held at other places aside from the seat of arbitration.

<sup>3</sup>As a rule, the constituted arbitral tribunal shall issue a procedural order after the first hearing of the parties, as far as the parties have not agreed yet on individual procedural rules (language, translation, evidence, time-limits, etc.). This order of the arbitral tribunal determines – in compliance with the minimal procedural guaranties – the additional details of the proceedings. Furthermore, it asks for the advance payment of costs with the time-limit to deposit it and works as needed with a secretary.

#### **Art. 9 Tenure**

<sup>1</sup>The parties may set a time-limit for the tenure of the arbitral tribunal through the arbitration agreement or by a later stipulation.

<sup>2</sup>The time-limit for the arbitral tribunal to make its award may be extended for a certain period of time:

- a) by a stipulation of the parties or
- b) by the decision of the competent judicial authority at the seat of the arbitral tribunal, at the request of a party or the arbitral tribunal.

### **III. Challenge, Removal and Replacement of Arbitrators**

#### **Art. 10 Binding Challenging Reasons**

<sup>1</sup>An arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.

<sup>2</sup>A party may challenge the arbitrator it has designated only for a reason which occurred after the designation, unless the party makes credible that it has not been aware of this challenging reason before his designation.

#### **Art. 11 Challenge Procedure**

<sup>1</sup>A challenging reason must be raised, at the latest, at the beginning of the arbitral proceeding or promptly after its discovery.

<sup>2</sup>If the opposing party or the challenged arbitrator brings forth a reason against the challenge, the competent judicial authority at the seat of the arbitral tribunal shall decide on that challenge, if the challenging party files a respective writ within 30 days.

<sup>3</sup>In case an arbitrator has been successfully challenged, another arbitrator shall be appointed using the same procedure as the former arbitrator.

#### **Art. 12 Removal**

<sup>1</sup>Each member of the arbitral tribunal may be removed by a written stipulation of the parties.

<sup>2</sup>The management of SVIT Switzerland may remove a member of the arbitral tribunal at the request of a party, if this member fails to perform his function within a due time-limit or with due care.

<sup>3</sup>The applicable statutory provisions govern the appeal of such a decision.

#### **Art. 13 Replacement of an Arbitrator**

<sup>1</sup>In case an arbitrator dies, is suspended, is removed or resigns his replacement, his replacement shall be conducted in the same procedure as his appointment, unless the parties agree otherwise.

<sup>2</sup>If the arbitrator cannot be replaced using such a procedure, the management of SVIT Switzerland is competent to effectuate the replacement.

<sup>3</sup>The replacement of an arbitrator of a three-member arbitral tribunal does not suspend the time-limit for the arbitral tribunal to render its award. If an arbitrator is replaced, the arbitral proceedings resume at the stage of the predecessor's withdrawal, unless the arbitral tribunal makes a deviating order.

## **Part 2: Arbitral Proceedings**

### **I. General Provisions**

#### **Art. 14 Litispendence**

<sup>1</sup>Subject to an arbitration clause (Article 2), the proceedings is considered pending with the signing of the arbitration agreement.

<sup>2</sup>If an arbitration clause exists, the procedure is considered pending, when one party approaches the arbitral tribunal, i. e. for a one-member arbitral tribunal by the filing of the request with the secretariat of the arbitral tribunal to designate the sole arbitrator or with the signing of the joint written statement (Art. 4), and for a three-member arbitral tribunal with the claimant's notification of his arbitrator to the respondent (Article 5).

<sup>3</sup>If a party withdraws his already pending claim at the arbitral tribunal, it may not take subsequent legal action against the same party on the identical subject-matter. This provision shall not be applied if a party withdraws his claim due to procedural grounds, in particular due to the lack of procedural requirements.

#### **Art. 15 Applicable Procedure**

<sup>1</sup>If the parties stipulated the application of the present Rules of Arbitration (Article 2), the proceedings at the arbitral tribunal are governed by these provisions.

<sup>2</sup>The parties may, however, deviate from the proceedings set forth in these Rules of arbitration, if they agreed thereupon in writing.

<sup>3</sup>Subject to provisions set forth in these Rules of Arbitration or a stipulation of the parties, for domestic arbitration the provisions of the Concordat on Arbitration (SR 279), for international arbitration the provisions of the Swiss Civil Procedure Code (SR 272) and, supplementary in all cases, the provisions of the Federal Act on Federal Civil Procedure (SR 273), are applicable.

#### **Art. 16 Opportunity of Being Heard**

<sup>1</sup>The arbitral tribunal must treat both parties equally and grant them the right to be heard.

<sup>2</sup>In particular, it must grant them the right:

- a) to put forward their claims and defenses in law or in fact;
- b) to have access to the file of documents at any time in the regular course of business;
- c) to attend hearings for the presentation of evidence and oral hearings ordered by the arbitral tribunal;
- d) to representation or assistance by an attorney of either party's own choice. The party's attorney must present a written power of attorney.

### **Art. 17 Time-Limits**

<sup>1</sup>For all procedural steps, the arbitral tribunal shall set a time-limit via registered letter, of which the parties may request once a reasonable extension based upon a justified application.

<sup>2</sup>Failing to act within the set time-limit results in the automatic continuation of the proceedings. The arbitral tribunal must issue a warning to this effect when it sets the time-limit.

<sup>3</sup>The arbitral tribunal may set an adequate grace period if a party proves that it could not comply with the original one-time time-limit for reasons beyond its control.

### **Art. 18 Official Language**

<sup>1</sup>Subject to agreement by the parties, the arbitral tribunal shall determine at the stage of its constitution (Article 8) the language or languages to be used in the proceedings.

<sup>2</sup>The arbitral tribunal may order that all or specified documents submitted during the proceedings in the original language be translated into the language or languages agreed on by the parties or determined by the arbitral tribunal.

### **Art. 19 Minutes**

<sup>1</sup>Hearings and examinations must be reported in the minutes.

<sup>2</sup>The keeper of the minutes must sign the minutes of the hearing.

<sup>3</sup>With the consent of the persons examined, the minutes of examinations may be replaced by a stenographic report or by a tape recording.

<sup>4</sup>Immediately following the examination, the keeper of the minutes must read the minutes aloud to the person being examined and the keeper of the minutes, the examining arbitrator and the person being examined must sign them. If the examination is recorded on tape, the aforementioned persons must listen to and duly confirm the content of the tape in writing.

## **Art. 20 Advance Payment**

<sup>1</sup>The arbitral tribunal commits the parties to make an advance payment for the anticipated costs of the arbitral proceedings and conditions the procedure on respective payment.

<sup>2</sup>As a rule, both parties must contribute an equal amount to the advance payment.

<sup>3</sup>If one of the parties does not make the required advance payment, the other party has the option to advance the entire cost or renounce the arbitral proceeding. A party renouncing the arbitral proceeding may still initiate another arbitral proceeding for the same dispute or file it with the appropriate judicial authority.

<sup>4</sup>The determination of the allocation of the procedural costs does not take into account which party has made the advance payment.

## **Art. 21 Provisional Measures**

<sup>1</sup>At the request of one party, the arbitral tribunal may only order provisional measures, including the preservation of evidence, if no identical request has previously been requested from the judicial authorities.

<sup>2</sup>At a party's request, the arbitral tribunal may order preliminary or protective measures as soon as the parties have submitted the documents to the arbitral tribunal. In case an affected party does not voluntarily abide by the arbitral tribunal's ordered measures, the judicial authority shall issue the requisite orders at the request of the arbitral tribunal or by its consent at the request of a party. The judicial authority shall apply its own law. If one party requests provisional measures, the arbitral tribunal's consent thereto is needed.

<sup>3</sup>The requesting party is liable for damages resulting from unjustified provisional measures. The arbitral tribunal may condition the order of such measures on the requesting party's provision of an adequate security if prejudice to the other party is likely to occur.

<sup>4</sup>Such a security must be released when it is clear that no action for damages has been filed. In case of uncertainty, the arbitral tribunal shall set a time-limit to bring suit.

## **Art. 22 Joinder of Parties, Joinder of Actions and Participation of Third Parties**

<sup>1</sup>An arbitral proceeding may be conducted by or against joint litigants, if:

- a) all parties are linked by one or several consistent arbitration agreement(s); and
- b) the asserted claims are identical or possess a material connection.

<sup>2</sup>Claims materially connected between the same parties may be adjudicated in the same arbitral proceedings if these claims are the subject matter of consistent arbitration agreements between the parties.

<sup>3</sup>If the arbitral tribunal shall determine whether to grant a third or involved party's request that a third party participate in an already pending proceeding under these Rules of Arbitration, an arbitration agreement between said third party and the already involved parties as well as the arbitral tribunal's consent thereto is requested.

## **II. Arbitral Proceedings**

### **Art. 23 Individual Procedural Steps**

<sup>1</sup>The proceedings at the constituted arbitral tribunal shall be initiated with the procedural order (Article 8) and with the conciliation if appropriate.

<sup>2</sup>If the parties cannot reach a settlement in this conciliation attempt, the correspondence (Article 25 et seq.) shall be conducted.

<sup>3</sup>After completion of the correspondence, the arbitral tribunal shall invite the parties to a first hearing to clarify which facts are relevant and contentious. The substantial declarations of the parties must be recorded in the minutes. If necessary, the arbitral tribunal shall prompt the parties to clarify, adjust, simplify or supplement the particulars set out in the briefs.

<sup>4</sup>Subsequently, the arbitral tribunal shall order what evidence shall be taken (taking of evidence: Articles 32 et seq.).

<sup>5</sup>After completion of the evidence phase, each party can make a closing statement (Article 44).

<sup>6</sup>Thereafter, the arbitral tribunal shall render the award (Article 45).

### **III. Trial of Conciliation**

#### **Art. 24 Competence for Conciliation**

<sup>1</sup>The arbitral tribunal shall attempt to bring the parties to conciliation, as a rule, before the correspondence begins (Articles 25 et seq.); it may, however, do so at any stage of the proceedings and may draw the parties' attention to the possibility of Mediation.

<sup>2</sup>In case a settlement can be reached, it must be recorded in the minutes (Article 19) and the parties or their attorneys must sign it.

<sup>3</sup>In case such a settlement has been reached or the parties submit a private settlement, the arbitral tribunal shall record the settlement in the form of an award (Article 47) and declare the proceedings as closed in this regard. If necessary, the arbitral tribunal shall render, at the same time, a decision regarding the costs (Article 49).

### **IV. Correspondence**

#### **Art. 25 Basic Provisions**

<sup>1</sup>The regular correspondence shall consist of the statement of claim (Article 27) and the statement of defense (Article 28) as well as of the counterclaim and the response to the counterclaim (Article 29).

<sup>2</sup>The arbitral tribunal shall determine whether the parties can or must submit additional briefs and shall set the time-limits for the submission of these briefs.

<sup>3</sup>If both parties agree thereupon, the arbitral tribunal may replace the correspondence entirely or in parts by oral statements, which must be recorded in the minutes.

<sup>4</sup>The parties' failure to act within the set time-limit shall result in the continuation of the proceedings (Article 17). The arbitral tribunal must warn the parties of this legal consequence.

#### **Art. 26 Service and Number of Briefs**

<sup>1</sup>Each party must serve its submitted brief on the opposing party.

<sup>2</sup>The parties must, therefore, submit a sufficient number of copies to provide each arbitrator as well as the secretary of the arbitral tribunal (Art. 7) and each opposing party with one copy.

## **Art. 27 Statement of Claim**

<sup>1</sup>If the parties cannot reach a settlement in the conciliation attempt (Article 24) and if the claimant has not filed a statement of claim yet, the arbitral tribunal set for the claimant a time-limit to bring suit.

<sup>2</sup>The statement of claim must include the following:

- a) the proper designation of the parties;
- b) a short, plain and complete outline of the merits of the case and, if necessary, the legal reasoning;
- c) accurate specification of evidence offered for each fact asserted;
- d) the claimant's precise demands for relief or remedy (complaint);
- e) the signature of the claimant or his attorney; and
- f) a numbered list of all exhibits.

## **Art. 28 Statement of Defense**

The respondent may submit within the time-limit set by the arbitral tribunal a statement of defense which contains the following:

- a) any pleas contesting the arbitral tribunal's jurisdiction or the admissibility of the claim;
- b) the party's answer to the statements of the facts of the case, the party's own explanation of the facts of the case and , if necessary, legal reasoning;
- c) the specification of evidence offered and rebutting evidence;
- d) the answer to the claimant's demands (reply to the complaint);
- e) the signature of the respondent or his attorney; and
- f) a numbered list of all exhibits.

## **Art. 29 Counterclaim**

<sup>1</sup>The respondent may raise a counterclaim, if such a claim (cross-claim) is about an arbitration matter that is also embraced by a concurrent arbitral agreement of the parties. .

<sup>2</sup>The provisions on the statement of claim govern correspondingly the form of the counterclaim (Article 27).

<sup>3</sup>The claimant may submit a reply to the counterclaim, to which the provisions on the statement of defense (Article 28) apply accordingly.

## **Art. 30 Belated Submissions**

<sup>1</sup>After the first correspondence, a party may present the arbitral tribunal with new facts, which it was not able to furnish before, in a brief additional submission.

<sup>2</sup>Likewise, the party may present new evidence it was not obliged or able to put forward at a previous point in time.

<sup>3</sup>A party asserting new facts may amend the complaint correspondingly.

<sup>4</sup>If so, the opposing party has the opportunity to reply.

## **V. Suspension of the Proceedings in Case of an Offset-Defense**

### **Art. 31 Offset-Defense**

<sup>1</sup>If a party raises an offset-defense, the arbitral tribunal may decide on this defense, even if respective claim is not embraced by the arbitral agreement of the parties or if there is another arbitral or jurisdiction agreement. However, it is in the arbitral tribunal's discretion to suspend the proceeding, until the party having raised an offset-defense presents a final judgment on this legal relationship.

<sup>2</sup>If the arbitral tribunal suspends the proceeding, it shall set a time-limit for the pleading party to bring suit before the competent judicial authority. If the party fails to do so within the time-limit, the proceedings shall continue as though the offset-defense had never been raised. The arbitral tribunal must warn the parties of this legal consequence.

<sup>3</sup>In international arbitral proceedings, the arbitral tribunal shall also have jurisdiction to determine an offset-defense, if the asserted claim is not covered in the arbitration agreement, and even if there is another arbitration agreement or a forum selection clause with respect to said claim.

## **VI. Procedures for the Introduction of Evidence**

### **Art. 32 General Provisions**

<sup>1</sup>Parties may only produce evidence on substantial and contentious facts and only in case of need. The arbitral tribunal may also consider evidence which are not offered by the parties.

<sup>2</sup>The arbitral tribunal shall draw the parties' attention to the apportionment of the burden of proof. In addition, the arbitral tribunal may at any stage inform the parties about the current stage of taking evidence.

<sup>3</sup>The parties are entitled and must be invited to attend the evidential proceedings. The non-appearance of a party is presumed to be a waiver of attendance.

<sup>4</sup>The parties may authorize the arbitral tribunal to render an award merely on the basis of documentary evidence. The authorization shall be made in writing or by the signature of a corresponding declaration in the minutes.

### **Art. 33 Sources of Evidence**

<sup>1</sup>The arbitral tribunal may consider the following sources of evidence:

- a) documents (Article 35);
- b) written information (Article 36);
- c) witnesses (Article 37);
- d) inspection (Article 38);
- e) expert witnesses (Article 39);
- f) party questioning (Article 41).

<sup>2</sup>When necessary the arbitral tribunal may request the assistance of the competent judicial authority at its seat (e. g., to summon an unwilling witness, to enforce the production of a document, etc.).

### **Art. 34 Consideration of Evidence**

The arbitral tribunal shall consider all evidence at its free discretion and according to its best judgement.

### **Art. 35 Documents**

<sup>1</sup>The parties must enclose in their correspondence (Article 25 et seq.) original or photocopies of all invoked documents available to them. At the request of the arbitral tribunal or the opposing party, the party in question must submit the original or photocopied documents for their examination at an evidence hearing.

<sup>2</sup>A party referring to documents which the opposing party possesses may request that the arbitral tribunal order the opposing party to produce them. To enforce the production, the competent judicial authority may be invoked (Article 33).

<sup>3</sup>If a party is reluctant to submit a document or fails to do so due to its intentional disposal or destruction, the arbitral tribunal may presume the validity of the opposing party's assertion.

### **Art. 36 Written Information**

<sup>1</sup>The arbitral tribunal may request public authorities to provide written information.

<sup>2</sup>The arbitral tribunal may seek to obtain written information when the examination of witnesses is unreasonably difficult.

<sup>3</sup>The arbitral tribunal must inform the parties when it obtains such written information and give them the opportunity to comment upon it.

<sup>4</sup>Obtaining written information does not exclude a later witness examination.

### **Art. 37 Witnesses**

<sup>1</sup>The arbitral tribunal shall summon witnesses in due time and provide summary information on the dispute.

<sup>2</sup>Before the arbitral tribunal examines a witness, it must inform the witness of his obligation to speak the truth (Article 307 of the Swiss Federal Criminal Code) and his right to refuse testimony (pursuant to the Code of Civil Procedure at the arbitral tribunal's seat). This information must be recorded in the minutes.

<sup>3</sup>A witness may refuse examination if:

- a) his statement might tarnish his reputation or he might be held pecuniarily responsible for his statement;
- b) his statement might adversely affect his family;
- c) the witness is subject to a legal obligation of professional discretion for which he may be held criminally responsible in case of violation of said obligation (e.g., medical doctors, clergymen, lawyers, officers), unless he has been released from his privilege;
- d) the witness meets the prerequisites for another privilege mentioned in Article 42 of the Federal Act on Civil Procedure.

<sup>4</sup>The sole arbitrator or, as a rule, the presiding arbitrator of a three-member arbitral tribunal shall conduct the examination. The arbitrator and the parties may request the presentation of particular questions.

<sup>5</sup>The examination shall be recorded in the minutes (Article 19).

<sup>6</sup>The parties may challenge witnesses and their credibility (e.g., due to friendship, hostility, dependence, possible advantage or disadvantage), subject to the arbitral tribunal's discretion.



Likewise, the arbitral tribunal shall determine which partners of a general or limited partnership shall be questioned.

<sup>2</sup>The arbitral tribunal shall inform the examined persons of their obligation to speak the truth. This information shall be recorded in the minutes.

<sup>3</sup>The arbitral tribunal shall consider a party's refusal to testify (e.g., in order not to tarnish his or a family member's reputation or for other reasons) pursuant to Article 34.

<sup>4</sup>In addition, the provisions on witness examination shall be applied accordingly.

#### **Art. 42 Precautionary Taking of Evidence**

<sup>1</sup>If of evidence is in danger of becoming unavailable at the time of the normal evidentiary admission procedure, either party may request in writing and good faith that the arbitral tribunal take such evidence beforehand. The precautionary taking of such evidence shall be conducted under the present provisions.

<sup>2</sup>If the arbitral tribunal is not yet constituted at the time of the precautionary admission of evidence either party may invoke the competent state authority. After completion of such provisional measures by the regular judicial authority, for further procedural steps the parties shall refer to the arbitral tribunal.

#### **Art. 43 Asserting Procedural Errors**

Procedural errors shall be objected promptly after having taken notice of them. Otherwise, the affected party shall be deemed to have waived its right to object.

### **VII. Closure of Proceedings**

#### **Art. 44 Optional Closing Statement**

<sup>1</sup>After the arbitral tribunal completes its taking of evidence, it shall request that the parties announce, within a short time-limit, whether they intend to give a closing statement.

<sup>2</sup>A party shall be deemed to have waived its right to make a closing statement if it fails to make such an announcement.

<sup>3</sup>If one party requests a closing statement, the other party is thereupon entitled to make its own closing statement, even if it has previously waived its right.

<sup>4</sup>Each party is entitled to make one statement.

#### **Art. 45 Award and its Deliberation**

<sup>1</sup>After parties have made or waived closing statements, the arbitral tribunal shall render its decision (award) through a closed-door deliberation. At the request of one party, the arbitral tribunal shall render its award within a thirty-day time-limit after the closing statement (Article 44). Separate from the decision on costs (Article 49), the arbitral tribunal shall charge the requesting party for the additional work occasioned by the expedited proceedings.

<sup>2</sup>All arbitrators shall attend the deliberation and cast their vote; the secretary shall have a consultative role.

<sup>3</sup>If a member of the arbitral tribunal refuses to attend the deliberation or to cast his vote, the remaining arbitrators may deliberate and decide without said member, unless otherwise agreed by the parties.

<sup>4</sup>The arbitral tribunal renders its awards with the majority of votes of its members, unless the parties agreed otherwise; the presiding arbitrator takes part in the voting.

#### **Art. 46 Applicable Law**

<sup>1</sup>The arbitral tribunal shall decide the dispute according to the law which the parties have chosen and in the absence of such a choice, according to the legal rules which Swiss judicial authority would apply.

<sup>2</sup>If the parties explicitly so authorize, the arbitral tribunal may also render its award according to the principles of equity.

#### **Art. 47 Form of the Award**

<sup>1</sup>The award shall be in writing and include the following information:

- a) the names of the arbitrators and the secretary;
- b) the seat of the arbitration tribunal;
- c) the designation of the parties;
- d) the parties' requests;
- e) a statement of the facts of the case, indicating the outcome of the evidence and the legal reasoning, respectively, of the equitable considerations;
- f) the decision of the case;
- g) the decision on the costs;
- h) the date; and
- i) the signatures of all arbitrators.

<sup>2</sup>An arbitrator's refusal to sign the award shall be noted in the award by the remaining arbitrators.

<sup>3</sup>Both parties may together waive their right to a detailed explanation from the arbitral tribunal (section 1 e).

#### **Art. 48 Interlocutory and Partial Awards**

Unless otherwise agreed by the parties, the arbitral tribunal may limit the proceedings to particular issues or demands.

#### **Art. 49 Decision on Costs**

<sup>1</sup>The arbitral tribunal shall decide the amount and apportionment of the costs of the proceedings as well as the prevailing party's compensation. The arbitral tribunal shall invite the attorneys to present their bill for services.

<sup>2</sup>The costs of proceedings and the prevailing party's compensation shall, in general be imposed on the unsuccessful party. If neither party fully prevails, the costs may be apportioned proportionally.

<sup>3</sup>If the successful party brings frivolous claims or renders the proceedings more difficult, the costs shall be imposed on the prevailing party.

<sup>4</sup>The arbitral tribunal may also render decisions regarding costs even before the final award.

<sup>5</sup>The arbitrators are entitled to compensation for their expenses and for a fee according to the arbitral tribunal's schedule of costs and fees.

#### **Art. 50 Rendering the Award**

<sup>1</sup>The arbitral tribunal shall render its award by serving it upon the parties.

<sup>2</sup>At the parties' request, the arbitral tribunal shall provide the parties with additional official copies of the award.

#### **Art. 51 Effect of the Award and Confirmation Procedure**

<sup>1</sup>The rendered award shall have the effect of an enforceable, final and absolute decision made by a judicial authority.

<sup>2</sup>The arbitrators and the secretary shall render their necessary cooperation to confirm and deposit the award with a state authority; the management of SVIT Switzerland offers its good offices thereupon.

<sup>3</sup>The management of SVIT Switzerland shall take the arbitral tribunal's decisions for deposit and maintain them on file for at least ten years.

#### **Art. 52 Correction, Explanation and Supplementary of the Award**

<sup>1</sup>Either party may request that the arbitral tribunal:

- a) correct editorial and calculation mistakes;
- b) explain specified parts of the award;
- c) render a supplementary award on claims presented in the arbitral proceedings but omitted from the award.

<sup>2</sup>The party shall submit the request to the arbitral tribunal within a thirty-day time-limit after the discovery of the mistake, setting forth the part of the award needing further explanation or the omission in the award to be supplemented, but at the latest within one year from the service of the award.

<sup>3</sup>Such a request shall not suspend the time-limit to appeal. For a party adversely affected by the outcome of the proceedings, a new period for appeal shall begin running.

#### **Art. 53 Remedies**

<sup>1</sup>The award shall be final.

<sup>2</sup>The remedies provided by the provisions of the state are reserved.

#### **Art. 54 Confidentiality and Publication of the award**

<sup>1</sup>Unless the parties explicitly agree in writing to the contrary, either party shall undertake as a matter of principle, to keep confidential all information and data it has become privy to during the arbitral proceedings to the extent that a disclosure by a party is not necessary in order to comply with a legal duty, to preserve or enforce a legal claim, or to enforce or appeal an award before a judicial authority. This undertaking shall also apply to the arbitrators, the tribunal-appointed expert witnesses, and the secretary.

<sup>2</sup>The arbitral tribunal's deliberations shall be confidential.

<sup>3</sup>The management of SVIT Switzerland may only publish the award in its entirety or in part if all references to the parties' identity have been deleted.

#### **Art. 55 Exclusion of Liability**

<sup>1</sup>The members of the arbitral tribunal shall not be liable for any act or omissions connected with an arbitral proceedings conducted under these Rules, unless these acts or omissions are shown to be deliberate or reckless breaches of duty.

<sup>2</sup>After the award has been made and the possibilities for correction have lapsed or been exhausted, the members of the arbitral tribunal shall refrain from making statements to any person about any matter concerning the arbitral proceedings. In addition, neither party shall seek to make any of these persons a witness in any legal or other proceedings arising out of the arbitration.