

30 - August - 2023

To: All Members No. GN/2023/171



Dear Members,

Gafta Arbitration Rules Changes 01 September 2023

Following careful consideration at Gafta's Arbitration Committee, Gafta Council has approved the following changes to Gafta 125 and 126 Rules. The changes will become effective for contracts entered into on or after 1 September 2023. The new Rules can be found on Gafta's website.

Gafta 125 Rules:

The preamble of Gafta 125 has been amended as follows:

"Any dispute arising out of a contract/s or arbitration agreement/s, which incorporates or refers to these Rules, shall exclusively be referred to Gafta arbitration. Gafta is the only body which has the authority to administer an arbitration arising from or out of its Rules. The arbitrator(s) or board of appeal, as the case may be, will proceed to determine all issues put before them, in accordance with the following provisions: -"

Rule 1.2 of Gafta 125 Rules has been amended to correct a clerical error and reads as follows:

"1.2 The juridical seat of the arbitration shall be, and is hereby designated pursuant to section 3 of the Arbitration Act 1996 as, England."

Rule 3.2a of Gafta 125 Rules has been amended to remove the option for Claimants to request Gafta to appoint an arbitrator on the Claimants' behalf and now reads as follows:

"(a) The claimant shall before the expiry of the time limit for claiming arbitration appoint an arbitrator and serve a notice on the respondent of the name of the arbitrator so appointed."

Rule 4.1 has been amended to be consistent with Rule 23a as follows:

"4.1 The claimant shall draw up clear and full submissions of his case, which, together with a copy of the contract and any supporting documents shall be served as set out in Rule 4.4. The claimant shall deposit with Gafta such sum as Gafta considers appropriate on account of the costs, fees and expenses of the arbitration. If the deposit is not received by Gafta by 12 noon on the 60th consecutive day of the date on which it was called for, the claim shall be deemed to be waived and absolutely barred. Time limits as per Rule 2 to apply."

Rule 8.1b has been amended to remove ambiguity and now reads as follows:

"(b) In the event that the tribunal determines it has no jurisdiction, Gafta will notify the parties of the tribunal's decision by way of an Award. Such decision shall be final and binding upon the parties subject to any right of appeal to a board of appeal pursuant to Rule 10. Gafta will invoice the claimant for any costs, fees and expenses incurred. In the event that the tribunal determines that it has jurisdiction, no appeal shall lie to a board of appeal."

The Gafta Appeal timetable letter and Rule 12.1 Gafta 125 Rules were amended so that an oral hearing will be the default option and reads as follows:

"12.1 Unless the parties agree otherwise or the Board so orders, there will be an oral hearing of the Appeal, the dates for which will be set in due course. The date, time and place will be arranged by Gafta having due regard to any agreement reached by the parties, the time table below or any other timetable determined by a board of appeal. The form in which parties may join an oral hearing is at the board of appeal's discretion. In exceptional circumstances where, as a consequence, the majority of the board members are unable to travel to the designated place of hearing, the board may, at its absolute discretion and where it believes it appropriate to do so, convene a virtual hearing using such electronic media as it deems fit. The decision of the board shall be final and binding on the parties."

Rule 16 of Gafta 125 Rules has been amended to remove the underlining for consistent formatting purposes.

Rule 19 of Gafta 125 Rules has been amended to remove the reference to 19.1 for consistent formatting purposes and now reads as follows:

"19. FEES AND EXPENSES

Each party engaging in an arbitration or an appeal pursuant to these Rules, whether or not a Member of Gafta, is deemed thereby to agree to abide by these Rules and to agree with Gafta to be liable to Gafta (jointly and severally with the other parties to the arbitration or appeal) for all fees and expenses incurred in connection with the arbitration or appeal or any remissions, which said fees and expenses shall, upon notification by Gafta be and become a debt due to Gafta."

Rule 23a of Gafta 125 Rules has been amended to be consistent with 4.1 and now reads as follows:

"a) When such matters are raised at the arbitration as a defence to the arbitration claim, the tribunal in its discretion may admit a claim if satisfied that the circumstances were outside the reasonable contemplation of the parties when they entered into the contract and that it would be just to extend the time, or when the conduct of one party makes it unjust to hold the other party to the strict terms of the time limit in question. Otherwise the tribunal may determine that the claim is waived and barred and refuse to admit it. If the provision of 4.1 has not been complied with, then the claim shall be deemed to be waived and absolutely barred subject to the discretion of the Tribunal. There shall be no appeal to the board of appeal against the decision of the tribunal to

admit a claim. If a tribunal decides not to admit the claim, then the claimant shall have the right to appeal pursuant to Rule 10, and the board of appeal shall have the power in its absolute discretion to overturn that decision and to admit the claim;"

Gafta 126 Rules:

The preamble of Gafta 126 has been amended as follows:

"Any dispute arising out of a contract/s or arbitration agreement/s, which incorporates or refers to these Rules, shall exclusively be referred to Gafta arbitration. Gafta is the only body which has the authority to administer an arbitration arising from or out of its Rules. The Arbitrator will proceed to determine all issues, in accordance with the following provisions: -"

Rule 4.2 of Gafta 126 Rules has been amended to be more in line with Gafta 125 procedure in regards to receiving the deposit. There will be two new procedural letters and the Rule now reads as follows:

"4.2 Not later than 7 business days from receipt of the deposit, the Claimants shall submit a clear and concise statement of their case and supporting documents to Gafta and to the Respondents."

Appeal Deposits

Gafta Appeal deposits have been increased from £17,000.00 to £20,000.00 for all Appeals lodged after 01 September 2023. Details can be found on our website.