



2025/9

14.1.2025

**COUNCIL DECISION (EU) 2025/9**

**of 12 December 2024**

**on the position to be taken on behalf of the European Union within the Joint Monitoring and Review Committee established by the Voluntary Partnership Agreement between the European Union and the Co-operative Republic of Guyana on forest law enforcement, governance and trade in timber products to the European Union, regarding the establishment of the rules of procedure of the Joint Monitoring and Review Committee and the working procedures for arbitration**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(4), first subparagraph, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Voluntary Partnership Agreement between the European Union and the Co-operative Republic of Guyana on forest law enforcement, governance, and trade in timber products to the European Union <sup>(1)</sup> (the 'Agreement') was concluded by the Union by means of Council Decision (EU) 2023/904 <sup>(2)</sup> and entered into force on 1 June 2023.
- (2) Pursuant to Article 20(1) of the Agreement, a Joint Monitoring and Review Committee (JMRC) has been established to facilitate the management, monitoring and review of the Agreement, including the management of the independent audit, and to facilitate dialogue and exchanges of information between the parties to the Agreement. Article 20(3) of the Agreement provides that the JMRC is to establish its own rules of procedure.
- (3) Pursuant to Article 26(1) of the Agreement, where the parties to the Agreement have failed to resolve a dispute by recourse to consultations and, where applicable, mediation, it is possible for either party to request the establishment of an arbitration panel. Article 26(5) of the Agreement provides that the JMRC is to establish the working procedures for arbitration.
- (4) The JMRC, during its next meeting, will adopt decisions establishing its rules of procedure and the working procedures for arbitration.
- (5) The Union should determine the position to be taken within the JMRC regarding the adoption of the decisions establishing the JMRC's rules of procedure and the working procedures for arbitration.
- (6) The position of the Union within the JMRC should therefore be based on the attached draft Decisions,

HAS ADOPTED THIS DECISION:

*Article 1*

1. The position to be taken on the Union's behalf within the Joint Monitoring and Review Committee (JMRC) established by the Voluntary Partnership Agreement between the European Union and the Co-operative Republic of Guyana on forest law enforcement, governance, and trade in timber products to the European Union shall be based on the draft Decisions of the JMRC attached to this Decision.
2. Minor technical changes to the JMRC's draft Decisions may be agreed to by the representatives of the Union in the JMRC without a further decision of the Council.

<sup>(1)</sup> OJ L 121, 5.5.2023, p. 3.

<sup>(2)</sup> Council Decision (EU) 2023/904 of 7 March 2023 on the conclusion of the Voluntary Partnership Agreement between the European Union and the Co-operative Republic of Guyana on forest law enforcement, governance and trade in timber products to the European Union (OJ L 121, 5.5.2023, p. 1, ELI: <http://data.europa.eu/eli/dec/2023/904/oj>).

*Article 2*

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 12 December 2024.

*For the Council*

*The President*

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**DECISION No .....****of the JMRC on the adoption of the Rules of Procedure of the JMRC referred to in Article 20 of the Agreement between the EU and Guyana**

THE JMRC,

Having regard to the Agreement between the EU and the Guyana, signed in Montreal, Canada, on 15 December 2022, and entered into force on 1 June 2023, and in particular Article 20(3) thereof,

Whereas:

1. The JMRC shall adopt its own Rules of Procedure and shall execute its functions as described in Annex X of the Agreement.
2. Pursuant to Article 20(2) of the Agreement, the Rules of Procedure are to be adopted by consensus of the Parties.
3. The Rules of Procedure shall be binding on the Parties.

THE JMRC HAS DECIDED AS FOLLOWS:

1. The Rules of Procedure of the JMRC are established as set out in the Annex to this Decision.
2. This Decision shall enter into force on ...

Done at ...

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## ANNEX

## RULES OF PROCEDURE OF THE JMRC

*Article 1***Representation of the Parties**

1. The JMRC shall be composed of representatives of the Parties at Ministerial and/or senior official level.
2. The representation of the EU to the JMRC shall be led by the Head of the Delegation of the European Union to Guyana (or responsible for Guyana) and shall comprise representatives from the European Commission up to a maximum number of 10 representatives.
3. The representation of Guyana to the JMRC shall be led by the Minister for Natural Resources and shall comprise the Commissioner for Forests, officials from the Ministry of Natural Resources, the Ministry of Finance, the Ministry of Trade, Ministry of Labor, Ministry of Amerindian Affairs, any other Ministries or Government Agencies as needed, and the Forestry Commission, up to a maximum number of 10 representatives.
4. Each Party shall notify in writing the Secretariat (referred to in Article 7) the names, contact details and functions of its representatives to the JMRC. The representatives are deemed to have the authorisation of representing the Party until the date the Party has notified the Secretariat of a new representative.

*Article 2***Chairmanship**

The JMRC shall be jointly chaired by the Minister of Natural Resources on behalf of Guyana and the Head of the Delegation of the European Union to Guyana (or responsible for Guyana) on behalf of the EU. The Chairpersons may arrange to be represented by respective designees. The designee shall exercise all the rights of that Chairperson.

*Article 3***Stakeholder observers**

1. National stakeholders in Guyana from civil society, local and international NGOs, private sector and indigenous peoples shall be invited to attend as observers the meetings of the JMRC and the Technical Committee of the JMRC, hereafter referred to as 'stakeholder observers', except for any sessions deemed by the Chairpersons to be reserved only for the representatives of the Parties.
2. The Secretariat shall invite relevant national stakeholder organisations from the civil society, local and international NGOs, private sector and indigenous peoples to nominate/elect in accordance with their respective own procedures their observers and alternates to the JMRC and the Technical Committee of the JMRC for a period of two years, as follows:
  - Civil Society and non-governmental organisations (NGOs) active in the field of forest- or environment-related matters: two (2) observers.
  - Indigenous peoples' organisations: two (2) observers.
  - Private sector: two (2) observers.
3. The stakeholder organisations shall notify in writing the Secretariat the names, organisation and contact details of their nominated/elected observers, as well as of their alternates to the Secretariat. The stakeholders will also share the selection procedure of the observers with the Secretariat.
4. Stakeholder observers may submit to the Secretariat documents in relation to specific items on the agenda no later than 7 calendar days before the JMRC meeting. If the Secretariat confirms the relevance and added value of the submitted documents it shall mark them 'For information' and circulate them to the representatives of the Parties.
5. Observers shall not have voting rights or any decision-making role in relation to the decisions and recommendation to be adopted by the JMRC or by one of its bodies.

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*Article 4***Technical Committee of the JMRC**

1. The JMRC shall be assisted in the performance of its duties by a Committee composed of representatives of the Parties at official level, hereafter referred to as 'Technical Committee of the JMRC'.
2. The Technical Committee of the JMRC, hereinafter called 'Technical Committee', shall prepare the meetings and the deliberations of the JMRC, implement the decisions of the JMRC where appropriate and, in general, ensure continuity of the JMRC and the proper functioning of the Agreement. It shall consider any matter referred to it by the JMRC as well as any other matter which may arise in the course of the day-to-day implementation of the Agreement.
3. The Technical Committee shall be chaired jointly by the Head of Cooperation of the Delegation of the European Union to Guyana (or responsible for Guyana) and the Commissioner for Forests or their designates.
4. The representatives of the EU to the Technical Committee shall be officials from the Delegation of the European Union to Guyana and the European Commission.
5. The representatives of Guyana to the Technical Committee shall be officials from:
  - Ministry of Natural Resources
  - Ministry of Finance
  - Guyana Forestry Commission (GFC)
  - Or any other Ministry or Agency relevant for the implementation of the Agreement
6. The Technical Committee shall meet regularly and at minimum in advance of each JMRC meetings.
7. In the event that the Technical Committee meets independently of a meeting of the JMRC, joint minutes summarizing the discussions shall be drawn upon by the Facilitator and signed by the Chairpersons. The Secretariat shall share these with the JMRC Chairpersons.
8. The JMRC Secretariat shall provide administrative support to the Technical Committee.
9. The present Rules of Procedures shall be applied *mutatis mutandis* by the Technical Committee
10. The Technical Committee has no decision-making power, but may submit its recommendations to the JMRC.

*Article 5***Sub-committees to the JMRC**

1. According to Article 3.11 of Annex V of the Agreement, the Parties may establish sub-committees to the JMRC, as appropriate, to deal with specific areas related to the implementation of the Agreement. The JMRC shall determine the purpose, composition, duration, tasks and working methods of such sub-committees. The Parties shall appoint its representatives to the sub-committees and inform the Secretariat. All relevant correspondences, documents and communications between the contact points of each sub-committee shall be forwarded also to the Secretariat.
2. At each regular meeting, the JMRC shall receive reports from each sub-committee on its activities and progress, including recommendations to the JMRC for review and appropriate action.
3. Unless otherwise agreed by the JMRC, the present Rules of Procedures shall be applied *mutatis mutandis* by the sub-committees.
4. The sub-committees will have no decision-making power, but may submit recommendations to the JMRC.

*Article 6***Experts and implementation entities**

1. The Chairpersons may invite experts to attend the meetings of the Technical Committee and/or the JMRC as well as sub-committees on an ad hoc basis to provide information on specific subjects, and only for the parts of the meeting where such specific subjects are discussed.
2. The Chairpersons may agree to invite entities involved in the implementation of the Agreement ('implementation entities'), to attend the meetings of Technical Committee of the JMRC and/or the JMRC meetings as well as sub-committees or parts thereof as appropriate on an ad hoc basis to provide information and updates, as well as to receive guidance and advice on their activities and contribution to the implementation of the Agreement and the attainment of its objectives.

*Article 7***Secretariat**

1. An official of the Delegation of the European Union to Guyana and an official of the Guyana Forestry Commission shall jointly act as Secretariat of the JMRC ('Secretariat'). Each Party shall notify to the other Party the name, function/position and contact details of the official who is the member of the Secretariat. This official is deemed to continue acting as member of the Secretariat for the Party until the date the Party has notified to the other Party a new member.
2. The Secretariat shall provide administrative support to the JMRC and the Technical Committee, as well as any sub-committees set up by the JMRC.
3. The Secretariat shall be assisted in its tasks by the Facilitator referred to in Article 8.

*Article 8***Facilitation**

1. The JMRC shall engage the services of a person who shall be independent and impartial, to facilitate the interactions, dialogue and discussions between the Parties as well as between the Parties and the stakeholders in relation to the implementation of the Agreement, hereafter referred to as 'Facilitator'.
2. The tasks of the Facilitator shall include the following:
  - support on all matters related to the organisation of the meetings of the JMRC, the Technical Committee, sub-committees including on the agenda, invitations, logistics and any other matter requested by the Secretariat.
  - facilitate the discussions during the meetings of the JMRC, the Technical Committee, sub-committees keep notes of the discussions and provide the draft Aide Memoire/Joint Minutes or summary of discussions as relevant.
  - Identify in association with the Parties all relevant stakeholders and support as necessary the processes for the nomination/election of the representatives as stakeholder observers.
  - Assist in the preparation of the Annual Report on the VPA implementation.
  - Identify and report to the Secretariat any issue in relation to the implementation of the Joint Implementation Framework and/or the VPA implementation at large.
  - Support upon request on issues related to funding, financing and donor coordination.
  - Identify and report to the Secretariat any issue in relation to synergies with other relevant initiatives, including but not limited to the Forest Partnership between Guyana and the EU and REDD+.
  - Respond to any request by the Secretariat and/or the Chairpersons of the JMRC, the Technical Committee, and sub-committees.
3. The Facilitator shall operate under the guidance and supervision of the Secretariat that shall remain at all times informed of the Facilitator's activities.

*Article 9***Documents**

Where the deliberations of the JMRC and/or the Technical Committee are based on written supporting documents, such documents shall be numbered and circulated by the Secretariat as documents of the JMRC and shall be referred to in the Aide Memoire and/or Joint Minutes.

*Article 10***Correspondence**

1. The representatives of the Parties responsible for official communications concerning the implementation of the Agreement shall be the Head of the Delegation of the European Union to Guyana for the EU (or responsible for Guyana) and the Minister responsible for Finance (for Guyana) as set out in Article 22(1) of the Agreement
2. All correspondence to the JMRC shall be directed to the Secretariat. The Secretariat will inform how submissions can be done, for example, by written correspondence, email, other.

3. The Secretariat shall ensure that correspondence addressed to the JMRC is forwarded to the Chairpersons and, where appropriate, circulated as documents referred to in Article 9 to the representatives of the Parties. Correspondence from either of the Chairpersons shall be sent to the recipients by the Secretariat and be numbered and circulated, where appropriate, to the other Party.

4. Either Party shall send all relevant documents to the Secretariat no later than 14 calendar days prior to the next JMRC meeting.

#### *Article 11*

##### **Meetings**

1. The JMRC shall meet at least twice a year, as provided for in Article 20(4) of the Agreement, or at the request of either Party.

2. By way of exception and if the Parties agree, the meetings of the JMRC, the Technical Committee, the sub-committees may be held virtually/by videoconference.

3. Each meeting of the JMRC shall be convened by the Secretariat at a date and place agreed by the Parties. The convening notice of the meeting shall be issued by the Secretariat to the representatives of the Parties no later than 28 calendar days prior to the start of the meeting, unless the Parties agree otherwise.

4. The Parties shall inform the Secretariat of the JMRC of the intended composition of the delegations attending the meeting no later than 14 calendar days before the start of the meeting.

#### *Article 12*

##### **Agenda for the Meetings**

1. A provisional agenda for each meeting shall be drawn up by the Secretariat on the basis of proposals made by the Parties. It shall be forwarded, together with the relevant documents, to the Chairpersons no later than 21 calendar days before the start of the meeting.

2. Additions or changes to the provisional agenda must be received by the Secretariat no later than 14 calendar days before the start of the meeting provided all relevant supporting documents are also received by the Secretariat together with the request for the additions or changes.

3. The agenda shall be adopted by the JMRC at the beginning of each meeting. Items other than those appearing on the provisional agenda may be placed on the agenda if the Parties so agree.

4. The Secretariat may with the agreement of the Chairpersons reduce the time periods specified in paragraphs 1 and 2 in order to take account of the requirements of a particular case.

#### *Article 13*

##### **Aide-Mémoire**

1. Draft minutes of each meeting shall be drawn up by the Facilitator.

2. The minutes shall, as a general rule, summarise each item on the agenda, specifying where applicable:

(a) The documents submitted to the JMRC

(b) Any statement the Chairpersons have agreed to be entered

(c) Conclusions in relation to specific items on the agenda. Conclusions reflect the outcome of discussion on a specific topic. They may, or may not, be linked to Recommendations.

(d) Recommendations adopted in accordance with Article 14 and

(e) Decisions adopted in accordance with Article 14.

3. The minutes shall also include a list of participants in the meeting.

4. The minutes shall be approved and signed by the Chairpersons at the end of the meeting ('Aide-Memoire'). The Secretariat shall share one original copy of those authentic documents with the Parties.

5. A Technical Committee of the JMRC convening independently of a JMRC, shall issue its own minutes summarizing discussions on each item of its agenda. These discussions will be incorporated in the relevant JMRC meetings.

The Aide-Memoire shall be made public.

*Article 14***Decisions and Recommendations**

1. The JMRC may adopt Decisions and/or Recommendations in respect of all matters where the Agreement so provides. As provided for in Article 20(2) of the Agreement, decisions and recommendations shall be adopted by consensus.
2. Decisions and/or Recommendations shall be binding on the Parties and shall enter into force after completion of the respective internal procedures of each Party.
3. In the period between meetings, the JMRC may adopt decisions or recommendations by written procedure if the Parties so agree. A written procedure shall consist of an exchange of notes between the Parties. The Chairpersons shall have the power to exchange such notes and to confirm the agreement on any decision, as necessary. The written procedure shall have a time limit of no more than 21 calendar days within which other Party must make known any reservations or amendments it has.

Within 21 days after receipt of the written procedure, a Party may request in writing to the other Party that the proposal be discussed in the next JMRC meeting. Such request automatically suspends the written procedure.

A proposal on which there have been no reservations within the time limit set for a written procedure shall be considered adopted by the JMRC.

Adopted proposals shall be recorded in the Aide Memoire of the next meeting of the JMRC.

4. Decisions or recommendations shall be entitled 'Decision' or 'Recommendation' respectively and shall be followed by a serial number, the date of adoption and a description of their subject-matter. Each decision shall provide for the date of its entry into force.
5. Decisions and recommendations adopted by the JMRC shall be authenticated by making an authentic copy signed by the Chairpersons of the JMRC available for each Party.

*Article 15***Languages**

1. The official language of the JMRC shall be English.
2. Unless otherwise decided, the JMRC shall base its deliberations on documentation and proposals prepared in English.

*Article 16***Publicity and Confidentiality**

1. Unless otherwise decided, the meetings of the JMRC shall not be public.
2. When a Party submits information considered as confidential under its laws and regulations to the JMRC, Technical Committee, and sub-committees, the Parties shall treat that information as confidential.
3. Each Party may decide on the publication of the decisions and recommendations of the JMRC in its respective official publication.

*Article 17***Expenses**

1. Each Party shall meet any expenses it incurs as a result of participating in the meetings of the JMRC, the Technical Committee, and sub-committees with regard to staff, travel, and subsistence expenses, and with regard to postal and telecommunications expenses.
2. The Parties will endeavour to split the costs in connection with the organization of meetings and the reproduction of documents evenly. Ad hoc discussions between the Parties will be held in this regard.

*Article 18***Field Missions**

If either Party requests to conduct a field mission related to the Agreement, both Parties shall agree on the Terms of Reference and timing of the mission.



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*Article 19***Mediation**

1. A Party may request, in writing and at any time, that the Parties enter into a mediation proceeding. The request must be sufficiently detailed to present clearly the issue at hand and the concerns of the complaining Party. Where a Party requests mediation pursuant to paragraph 1, the other Party shall consider the request and reply in writing within seven calendar days of the request. Failing this, the request for mediation shall be considered to have been dismissed.
2. Where Parties agree to seek recourse to mediation pursuant to Article 25(4) of the Agreement, the Parties shall jointly select a mediator at the beginning of the mediation proceeding, and no later than 14 calendar days after receipt of the reply to the mediation request. Failing to do so, the Parties may jointly request the Secretary-General of the Permanent Court of Arbitration to appoint a mediator within 7 days.
3. A mediator shall not be a citizen of either Party, unless the Parties agree otherwise. The mediator assists the Parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute. The mediator will be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the Parties and the circumstances surrounding the dispute, including any previous practices between the Parties. The mediator may conduct the mediation proceedings in such a manner as he/she considers appropriate, taking into account the circumstances of the case, the wishes the Parties may express, including any request by a Party that the mediator hears oral statements, and any special need for a speedy settlement of the dispute.
4. The mediator may organise meetings between the Parties, consult the Parties jointly or individually, seek the assistance of, or consult, relevant experts and stakeholders, and provide any additional support requested by the Parties.
5. The mediator is expected to deliver his opinion to the Parties within 45 calendar days of his appointment. A request for additional time may be entertained by the Parties, provided there is sufficient justification.
6. Taking into account the opinion delivered by the mediator, the Parties shall endeavour to reach a mutually satisfactory solution within 30 calendar days from the notification of the mediator's opinion. Pending a final agreement, the Parties may consider possible interim solutions.
7. The solution may be adopted by the JMRC. The Parties may decide to apply the written procedure as per Article 15(3) of the current Annex instead of convening a JMRC. Mutually satisfactory solutions shall be made public, unless the Parties decide otherwise. However, the version disclosed to the public may not contain any information classified by either Party as confidential.
8. The mediator shall submit in writing a draft factual report to the Parties, providing a brief summary of the issue at hand and any mutually satisfactory solution reached as the final outcome of the proceeding, including possible interim solutions. The mediator shall grant the Parties 15 days to comment on the draft report. After considering the comments of the Parties submitted within the deadline provided, the mediator shall submit, in writing, a final factual report to the Parties within 15 days. The factual report may not contain any interpretation of the Agreement.
9. The proceeding shall be terminated:
  - (a) by the adoption of a solution mutually agreed between the Parties, on the date of adoption;
  - (b) by a written declaration of the mediator, after consultation with the Parties, that further efforts at mediation would be to no avail, on the date of that declaration;
  - (c) by a written declaration of a Party after exploring solutions mutually considered under the mediation proceeding and after having considered the opinion of the mediator, on the date of that declaration. Such declaration may not be issued before the period set out in paragraph 7 has expired; or
  - (d) at any stage of the proceeding by mutual agreement of the Parties, on the date of that agreement.
10. Where the Parties have agreed to a solution, each Party shall take the measures necessary to implement it within the agreed time limit. The implementing Party shall inform the other Party, in writing and within the agreed time limit, of any steps or measures taken to implement the mutually satisfactory solution.
11. The Parties will endeavour to split the costs in connection with a mediation proceeding evenly. *Ad hoc* discussions between the Parties will be held in this regard.

*Article 20***Amendments of the Annexes**

1. If one of the Parties wishes to amend the provisions of the Annexes to the Agreement, it shall notify the JMRC accordingly and submit its proposal to this end.
2. The JMRC may request the Technical Committee of the JMRC to consider the proposal and express its views and suggestions. The JMRC may set up a sub-committee to support the Technical Committee of the JMRC with this work.
3. The JMRC may, upon the proposal of one Party and taking into account the views and suggestions of the Technical Committee of the JMRC adopt a decision amending the Annexes in accordance with Article 27(3) of the Agreement and Article 14 of these Rules.

*Article 21***Amendment of Rules of Procedure**

The JMRC may adopt decisions amending these Rules of Procedure in accordance with Article 14 of these Rules.

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**DECISION No .../2024 OF THE JOINT MONITORING AND REVIEW COMMITTEE**

**of ...**

**on the adoption of the working procedures for arbitration referred to in Article 26 of the Voluntary Partnership Agreement between the European Union and the Co-operative Republic of Guyana on forest law enforcement, governance and trade in timber products to the European Union**

THE JOINT MONITORING AND REVIEW COMMITTEE,

Having regard to the Voluntary Partnership Agreement between the European Union and the Co-operative Republic of Guyana on forest law enforcement, governance and trade in timber products to the European Union <sup>(1)</sup> (the 'Agreement'), and in particular Article 26 thereof,

Whereas:

The Agreement provides that the Joint Monitoring and Review Committee is to adopt Working Procedures for Arbitration,

HAS ADOPTED THIS DECISION:

*Article 1*

The working procedures for arbitration in case of dispute settlement under the Voluntary Partnership Agreement between the European Union and the Co-operative Republic of Guyana on forest law enforcement, governance and trade in timber products to the European Union are hereby adopted as set out in Annex to this Decision.

*Article 2*

This Decision shall enter into force on the date of its adoption.

Done at ..., ...

*For the Joint Monitoring and Review Committee*

*The Co-chairs*

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<sup>(1)</sup> OJ EU L 121, 5.5.2023, p. 3.

## ANNEX

## WORKING PROCEDURES FOR ARBITRATION

## Section I

**Introductory provisions***Article 1****Scope of application***

1. These Working Procedures for Arbitration supplement and clarify the Voluntary Partnership Agreement (the 'Agreement') between the European Union (the 'Union') and the Co-operative Republic of Guyana ('Guyana'), in particular Article 26 thereof.
2. These Working Procedures for Arbitration aim at enabling the Union and Guyana (the 'Parties') to resolve disputes that can arise between them in relation to the interpretation and application of the Agreement through an arbitration mechanism.

*Article 2****Definitions***

For the purposes of these Working Procedures for Arbitration, the following definitions apply:

- (1) 'arbitration panel' means a panel established under Article 26(1) of the Agreement;
- (2) 'arbitrator' means a member of the arbitration panel;
- (3) 'complaining Party' means the party to the Agreement that requests the establishment of an arbitration panel under Article 26(1) of the Agreement;
- (4) 'respondent' means the party to the Agreement that is notified of the request for the establishment of an arbitration panel under Article 26(1) of the Agreement;
- (5) 'representative of a Party' means an employee or any individual appointed by a Party who represents that Party for the purposes of a dispute under the Agreement;
- (6) 'day' means a calendar day unless otherwise specified;
- (7) 'third party' means a party that is not a disputing party, but that participates in the arbitration proceedings;
- (8) 'International Bureau' means the International Bureau of the Permanent Court of Arbitration;
- (9) 'PCA rules' means the Permanent Court of Arbitration Rules 2012, effective as from 17 December 2012, including any subsequent amendments;
- (10) 'PCA appointing authority' means the authority of the Permanent Court of Arbitration identified in the PCA rules as having the responsibility of appointing arbitrators in accordance with the PCA rules.

*Article 3****Applicable law***

1. The arbitration panel shall apply the Agreement as interpreted in accordance with the Vienna Convention on the Law of Treaties, and other treaties, rules and principles of international law relevant to the dispute and applicable between the Parties.
2. Notwithstanding paragraph 1, where a dispute submitted to arbitration raises a question of interpretation and application of a provision of the Agreement defined by reference to a provision of the domestic law of a Party, the arbitration panel may consider, as appropriate, the domestic law of that Party as a matter of fact. In doing so, the arbitration panel shall follow the prevailing interpretation given to the domestic law by the courts or authorities of that Party. Any interpretation given to domestic law by the arbitration panel shall not be binding upon the courts or the authorities of that Party.

*Article 4***Notifications**

1. Any request, notice, written submission or other document of the arbitration panel shall be sent to both Parties and, where relevant and appropriate, to the International Bureau, at the same time.

Any request, notice, written submission or other document of a Party which is addressed to the arbitration panel shall be copied and sent to the other Party and, where relevant and appropriate, to the International Bureau at the same time.

Any request, notice, written submission or other document of a Party which is addressed to the other Party shall be copied and sent to the arbitration panel and, where relevant and appropriate, to the International Bureau at the same time.

2. Any notification of a request, notice, written submission or other document pursuant to paragraph 1 shall be made by email or, where appropriate, any other means of communication that provides a record of the sending thereof. Unless proven otherwise, such notification shall be deemed to be delivered on the date of its sending.

3. In accordance with Article 22 of the Agreement, all notifications shall be addressed to the Minister of Finance of Guyana, for Guyana, and to the Head of the Union Delegation in Guyana, for the Union.

4. Minor errors of a clerical nature in a request, notice, written submission or other document related to the arbitration panel proceedings may be corrected by delivery of a new document clearly indicating the changes.

5. If the last day for delivery of a document falls on a public holiday of Guyana or of the Union, the time period for the delivery of the document shall end on the first following business day.

*Article 5***Representatives**

The Parties may be represented or assisted by persons of their choice, in accordance with their internal rules and procedures. The names and addresses of such persons shall be communicated in writing to the other Party including whether the appointment is being made for the purposes of assistance or representation.

*Section II***Establishment of the arbitration panel***Article 6***Appointment of arbitrators**

1. Subject to paragraph 5, the Parties shall each appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator, who will act as the presiding arbitrator of the arbitration panel.

2. If within 30 days of the receipt of the complaining Party's notification of the appointment of an arbitrator the respondent has not notified the complaining Party of the arbitrator it has appointed, the complaining Party may request the International Bureau to appoint the second arbitrator. The PCA appointing authority shall appoint the second arbitrator as promptly as possible.

3. If within 30 days of the appointment of the second arbitrator, the two arbitrators have not agreed on the choice of the third arbitrator, either Party may request the International Bureau, subject to paragraph 5, to appoint the third arbitrator in accordance with the applicable PCA rules. The PCA appointing authority shall appoint the third arbitrator as promptly as possible. In making the appointment, the PCA appointing authority shall use the following list-procedure:

- (a) the PCA appointing authority shall communicate to each of the Parties an identical list containing at least three names;
- (b) within 15 days of the receipt of the list referred to in point (a), each Party shall return the list to the International Bureau, without copying the other Party, after having deleted the name or names to which it objects and numbered the remaining names on the list in the order of its preference;
- (c) after the expiration of the period of time referred to in point (b), the PCA appointing authority shall appoint the third arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the Parties;
- (d) if for any reason the appointment cannot be made according to the procedure set out in this paragraph, the PCA appointing authority may exercise his or her discretion in appointing the third arbitrator.

4. In appointing arbitrators, the Parties and the PCA appointing authority may choose persons who are Members of the Permanent Court of Arbitration.
5. In appointing arbitrators, the Parties and the PCA appointing authority shall not choose persons who are members, officials or other servants of the Union institutions, of the government of a Member State of the Union, or of the Government of Guyana.

#### *Article 7*

##### ***Failure to establish the arbitration panel***

In the event of a failure to establish the arbitration panel pursuant to Article 6, the PCA appointing authority shall, at the request of either Party, constitute the arbitration panel and, in doing so, may revoke any appointment already made and appoint each of the arbitrators and designate one of them as the presiding arbitrator. The PCA appointing authority may, if it deems it appropriate, reappoint previous appointees.

#### *Article 8*

##### ***Independence and immunity of arbitrators***

1. The arbitrators shall be independent and impartial, shall serve in their individual capacity and shall not take instructions from any organisation or government.
2. When a person is approached in connection with his or her possible appointment as an arbitrator, he or she shall disclose to the Parties and the PCA appointing authority any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, from the time of his or her appointment and throughout the arbitral proceedings, shall without delay disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence to the Parties and the International Bureau and the other arbitrators.
3. The arbitrators shall enjoy immunity from legal proceedings in the Union and in Guyana with respect to acts or omissions in connection with the arbitration.

#### *Article 9*

##### ***Ex parte contacts***

1. The arbitration panel shall not meet or communicate with a Party in the absence of the other Party.
2. An arbitrator shall not discuss any aspect of the subject matter of the proceedings with one or both of the Parties in the absence of the other arbitrators.

#### *Article 10*

##### ***Replacement of an arbitrator***

1. In the event of death or resignation of an arbitrator during the course of the arbitration proceedings, a substitute arbitrator shall be appointed or chosen in accordance with the procedure provided for in Article 6, which is applicable to the appointment or choice of the arbitrator being replaced.
2. In the event that an arbitrator fails to act, or is de jure or de facto unable to perform his or her functions, the procedure for challenging and replacing an arbitrator set out in Article 11 shall apply.
3. 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 arbitration panel decides otherwise.

#### *Article 11*

##### ***Challenge of arbitrators***

1. Any Party may challenge an arbitrator if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.
2. A Party may challenge the arbitrator appointed by it only for reasons of which it becomes aware after the appointment has been made.
3. A Party that intends to challenge an arbitrator shall send notice of this challenge within 30 days of the notification of the appointment of that arbitrator to the challenging Party or within 30 days of the date when the circumstances which may give rise to justifiable doubts as to the arbitrator's impartiality or independence became known to that Party.
4. The notice of challenge shall be communicated to the other Party, the arbitrator who is being challenged, the other members of the arbitration panel and the International Bureau. The notice of challenge shall state the reasons for the challenge.

5. When an arbitrator has been challenged by a Party, the other Party may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his or her office. This shall not imply acceptance of the validity of the grounds for the challenge.

6. If, within 15 days of the notice of challenge, the other Party does not agree to the challenge or the challenged arbitrator does not withdraw, the Party making the challenge may elect to pursue it. In that case, within 30 days of the notice of challenge, it shall seek a decision on the challenge by the PCA appointing authority.

7. In rendering a decision on the challenge, the PCA appointing authority may indicate the reasons for the decision, unless the Parties agree that no reasons shall be given. If the PCA appointing authority sustains the challenge, a substitute arbitrator shall be appointed or chosen in accordance with the procedure provided for in Article 6 which is applicable to the appointment or choice of the arbitrator being replaced.

### Section III

## **Arbitration proceedings**

### *Article 12*

#### **General provisions**

1. The arbitration panel shall conduct the arbitration in such manner as it considers appropriate, provided that the Parties are treated with equality and that at an appropriate stage of the proceedings each Party is given a reasonable opportunity to present its case. The arbitration panel, in exercising its discretion, shall conduct the proceedings in a manner that seeks to avoid unnecessary delay and expenses and to provide a fair and efficient process for resolving the dispute.

2. The ruling of the arbitration panel shall be final and binding on the Union and on Guyana.

3. The Union and Guyana shall make the arbitration panel ruling publicly available in its entirety, subject to the protection of confidential information.

### *Article 13*

#### **Place of arbitration**

1. The place of arbitration shall be The Hague, unless otherwise agreed.

2. The arbitration panel may meet at any place it deems appropriate for the inspection of goods, other property or documents. The Parties shall be given sufficient notice to enable them to be present at such an inspection.

### *Article 14*

#### **Confidentiality**

1. Each Party and the arbitration panel shall treat as confidential any information submitted by the other Party to the arbitration panel that the other Party has designated as such. When a Party submits to the arbitration panel a written submission which contains confidential information, it shall also provide, within 15 days, a submission without the confidential information and which can be disclosed to the public.

2. Nothing in these Working Procedures for Arbitration shall preclude a Party from disclosing statements of its own positions to the public. As long as the proceedings have not been concluded, a Party shall not disclose any information designated by the other Party as confidential.

3. The arbitration panel shall meet in closed session when the submission and arguments of a Party contains confidential information. The Parties shall maintain the confidentiality of the arbitration panel hearings when the hearings are held in closed session.

### *Article 15*

#### **Operation of the arbitration panel**

1. The presiding arbitrator shall chair all the meetings of the arbitration panel. The arbitration panel may delegate to the presiding arbitrator the authority to make administrative and procedural decisions.

2. The arbitration panel shall conduct its activities by any means, including telephone, email, facsimile transmissions or computer links.

3. Only arbitrators shall take part in the deliberations of the arbitration panel, but the arbitration panel may permit arbitrators' assistants to be present at its deliberations.

4. The drafting of any ruling or report shall remain the exclusive responsibility of the arbitration panel and shall not be delegated.
5. In the event that the arbitration panel considers that there is a need to change any of the time periods for the proceedings or to make any other procedural or administrative adjustment, it shall inform the Parties, in writing and after consulting them, of the reasons for the change or adjustment and of the new time period or adjustment needed.

#### *Article 16*

##### ***Time-frame of the arbitration***

1. As soon as practicable after its establishment and after inviting the Parties to express their views, the arbitration panel shall establish the provisional timetable of the arbitration. The arbitration panel may, at any time, after inviting the Parties to express their views, extend or abridge this period of time.
2. Within 10 days of the establishment of the arbitration panel, either Party may submit a reasoned request to the effect that the case is urgent. In that case, the arbitration panel shall give a ruling on this request within 15 days of the receipt of such request.

#### *Article 17*

##### ***Organisational meeting***

1. The Parties shall meet the arbitration panel within 30 days of its establishment in order to determine such matters as the Parties or the arbitration panel deem appropriate, including:
  - (a) the remuneration and expenses to be paid to the arbitrators;
  - (b) the terms of reference of the arbitration panel; and
  - (c) the timetable of the proceedings.
2. Unless the Parties agree otherwise, the terms of reference of the arbitration panel shall be:
  - (a) to examine, in the light of the relevant provisions of the Agreement cited by the Parties, the matter referred to in the request for the establishment of the arbitration panel;
  - (b) to make findings on the conformity of a measure at issue with the provisions of the Agreement; and
  - (c) to deliver a ruling.

#### *Article 18*

##### ***Written submissions***

The complaining Party shall deliver its written submission no later than 10 days after the date of establishment of the arbitration panel. The respondent shall deliver its written submission no later than 20 days after the date of delivery of the written submission of the complaining Party.

#### *Article 19*

##### ***Hearings***

1. Based upon the timetable determined in the organisational meeting, after consulting with the Parties and the other arbitrators, the presiding arbitrator shall notify the Parties of the date, time and venue of the hearing. Subject to paragraph 6, this information shall be made publicly available by the Party in whose territory the hearing takes place.
2. The arbitration panel may convene additional hearings if the Parties so agree.
3. All arbitrators shall be present during the entirety of the hearing.
4. The following persons may, subject to the prior agreement of the Parties, attend the hearing, irrespective of whether the hearing is open to the public or not:
  - (a) representatives of a Party;
  - (b) advisers, assistants and administrative staff to the arbitrators;
  - (c) experts, as decided by the arbitration panel;
  - (d) witnesses;
  - (e) third parties.



5. No later than 7 days before the date of a hearing, each Party shall deliver to the arbitration panel and to the other Party a list of the names of persons who will make oral arguments or presentations at the hearing on behalf of that Party, other representatives who will be attending the hearing, and witnesses who will testify at the hearing.

6. The hearings of the arbitration panel shall be open to the public, unless the arbitration panel decides otherwise on its own motion or at the request of either Party.

7. The arbitration panel shall, in consultation with the Parties, decide on appropriate logistical arrangements and procedures to ensure that hearings which are open to the public are managed in an effective way. Those logistical arrangements and procedures may include the use of live web-broadcasting or closed-circuit television.

8. The arbitration panel shall conduct the hearing in the following manner, ensuring that the complaining Party and the respondent are afforded equal time in both argument and rebuttal argument:

*Argument*

(a) argument of the complaining Party;

(b) argument of the respondent.

*Rebuttal argument*

(a) reply of the complaining Party;

(b) counter-reply of the respondent.

9. The arbitration panel may direct questions to either Party or any witness at any time during the hearing.

10. The arbitration panel shall arrange for a transcript of the hearing to be prepared and delivered to the Parties within 7 days of the hearing. The Parties may comment on the transcript, and the arbitration panel may consider those comments.

11. Each Party may deliver a supplementary written submission concerning any matter that arose during the hearing within 10 days of the hearing.

*Article 20*

***Default***

1. If one of the Parties, duly notified under these Working Procedures for Arbitration, fails to appear at a hearing without showing sufficient cause for such failure, the arbitration panel may proceed with the arbitration.

2. If one of the Parties, duly required to produce documentary evidence, fails to do so within the given time limit without showing sufficient cause for such failure, the arbitration panel may make the ruling on the evidence before it.

*Article 21*

***Questions in writing***

1. The arbitration panel may at any time during the proceedings submit questions in writing to one or both Parties. Any questions submitted to one Party shall be copied and sent to the other Party.

2. Each Party shall provide the other Party with a copy of its responses to the questions submitted by the arbitration panel. The other Party shall have an opportunity to provide comments in writing on the Party's responses within 7 days of the delivery of that copy.

*Article 22*

***Third parties***

1. Unless the Parties agree otherwise, the arbitration panel may receive unsolicited written submissions from a natural person, who is a resident or a citizen of a Party, or a legal person established in the territory of a Party that is independent from the Government of Guyana and from Union institutions and bodies, provided that the submissions:

(a) are received by the arbitration panel within 10 days of the establishment of the arbitration panel;

(b) are directly relevant to a factual or a legal issue under consideration by the arbitration panel;

- (c) contain a description of the person making the submission, including, for a natural person, his or her nationality or residence, as applicable, and, for a legal person, its place of establishment, the nature of its activities, its legal status, its general objectives and its source of financing; and
  - (d) specify the nature of the interest that the person has in the arbitration panel proceedings.
2. The submissions shall be delivered to the Parties for their comments. The Parties may submit comments, within 15 days of the delivery of the submissions, to the arbitration panel.
  3. The arbitration panel shall list in its ruling all the submissions it has received pursuant to paragraph 1. The arbitration panel shall not be obliged to address in its report the arguments made in such submissions.
  4. Where the arbitration panel decides to address in its report the arguments mentioned in the submissions, it shall also take into account any comments made by the Parties pursuant to paragraph 2.

#### *Article 23*

##### **Experts**

1. The arbitration panel may appoint one or more experts to report to it, in writing, on specific issues to be determined by the panel. A copy of the expert's terms of reference established by the panel shall be communicated to the Parties.
2. Upon receipt of the expert's report, the arbitration panel shall send a copy to the Parties, who shall be given the opportunity to express, in writing, their opinion on the report. A Party shall be entitled to examine any document on which the expert's report relies.
3. At the request of either Party, after delivering the report the expert may be heard at a hearing, where the Parties shall have the opportunity to question the expert. At the hearing, either Party may present expert witnesses in order to testify on the points at issue.

#### *Section IV*

### **The arbitration panel rulings**

#### *Article 24*

##### **Decisions**

The arbitration panel shall make every effort to take decisions by consensus. Where a decision cannot be arrived at by consensus, the matter shall be decided by majority vote.

#### *Article 25*

##### **Form of the ruling**

1. The ruling shall be in writing and shall set out the findings of fact, the applicability of the relevant provisions of the Agreement, and the reasoning behind any findings and conclusions.
2. The ruling shall be signed by the arbitrators and it shall contain the date on which it was made and indicate the place of arbitration. Where any of the arbitrators fails to sign, the ruling shall state the reason for the absence of the signature(s).

#### *Article 26*

##### **Interpretation of the ruling**

1. Within 30 days of the receipt of the ruling, either Party, with notice to the other Party and to the PCA appointing authority, may request the arbitration panel to give an interpretation of the ruling.
2. The interpretation shall be given in writing within 30 days of the receipt of the request. The interpretation shall form part of the ruling and the provisions of Articles 15 and 25 shall apply, as appropriate.

*Article 27****Correction of the ruling***

1. Within 30 days of the receipt of the ruling, either Party, with notice to the other Party and the PCA appointing authority, may request the arbitration panel to correct any errors in computation, any clerical or typographical errors, or any errors of similar nature in the ruling. The arbitration panel may, however, make such corrections on its own initiative within 30 days of the communication of the ruling.
2. All corrections shall be in writing and shall form part of the ruling, and the provisions of Articles 15 and 25 shall apply, as appropriate.

*Article 28****Additional ruling***

1. Within 30 days of the receipt of the ruling, either Party, with notice to the other Party, and the PCA appointing authority may request the arbitration panel to make an additional ruling for claims presented in the arbitration proceedings but omitted from the ruling.
2. If the arbitration panel considers the request for an additional ruling to be justified and considers the omission rectifiable without any further hearings or evidence, it shall make the additional ruling within 30 days of the receipt of the request.
3. If an additional ruling is made, Articles 15 and 25 shall apply, as appropriate.

*Article 29****Compliance with the arbitration panel ruling***

1. The Parties shall take any measures necessary to comply in good faith with the arbitration panel ruling. The Parties shall agree within 10 days of the notification of the arbitration panel ruling on a reasonable period of time to comply with the arbitration panel ruling. In the event of disagreement between the Parties on the reasonable period of time to comply with the arbitration panel ruling, either Party shall request the original arbitration panel in writing to determine the length of the reasonable period of time and shall notify simultaneously the other Party. The reasonable period of time may be extended by mutual agreement of the Union and Guyana.
2. In the event of disagreement between the Parties concerning the compatibility of any measure with the arbitration panel ruling, a Party may request in writing the arbitration panel to rule on the matter. The arbitration panel shall notify its ruling within 90 days or in cases of urgency within 45 days of the submission of the request.

In the event of the original arbitration panel, or some of the arbitrators, being unable to reconvene to consider a request, a new arbitration panel shall be established in accordance with Article 6. The time limit for notifying the ruling shall be 60 days from the date of establishment of the new arbitration panel.

3. If the arbitration panel rules that a Party has failed to comply with the arbitration panel ruling, it shall impose a new deadline for that Party's compliance.

If the Party persists in not complying with the arbitration panel ruling, the other Party may, upon notification to the non-compliant Party, suspend the Agreement in accordance with Article 28 thereof. Any suspension shall be proportionate to the breach of obligation concerned, taking into account the gravity of the breach and the rights in question and, whether the suspension is based on the fact that the Party persists in not complying with the arbitration panel ruling.

Any suspension shall be temporary and shall be applied only until the Party has complied with the arbitration panel ruling, or until the Parties have agreed to otherwise settle the dispute.

4. The Party shall notify the Joint Monitoring and Review Committee (JMRC) and the other Party of any measure it has taken to comply with the ruling of the arbitration panel and of its request for an end to the suspension applied by the other Party.
5. If the Parties do not reach an agreement on whether the notified measure brings the Party into compliance with the arbitration panel ruling within 45 days of the submission of the notification, either Party may request the original arbitration panel in writing to rule on the matter. Such request shall be notified simultaneously to the other Party.

In the event of the original arbitration panel, or some of the arbitrators, being unable to reconvene to consider a request, a new arbitration panel shall be established in accordance with Article 6. The arbitration panel ruling shall be notified to the Parties and to the JMRC within 75 days of the submission of the request.

6. In the event of the original arbitration panel, or some of the arbitrators, being unable to reconvene to consider a request under paragraph 2, a new arbitration panel shall be established in accordance with Article 6. The period for notifying the ruling of the new arbitration panel shall in that case be 90 days from the date of establishment of the new arbitration panel.

#### *Article 30*

##### ***Settlement or other grounds for termination***

1. If, before the ruling is made, the Parties agree on a settlement of the dispute, the arbitration panel shall either issue an order for the termination of the arbitration proceedings or, if requested by both Parties and accepted by the panel, record the settlement in the form of an arbitration ruling on agreed terms. The arbitration panel is not obliged to give reasons for a ruling on agreed terms.

2. If, before the ruling is made, the continuation of the arbitration proceedings becomes impossible or is rendered nugatory for reasons other than those referred to in paragraph 1, the arbitration panel shall inform the Parties of its intention to issue an order unless a Party raises justifiable grounds for objection. The Parties shall then enter into consultations with the aim of settling the dispute.

#### *Section V*

##### ***Costs***

#### *Article 31*

##### ***Costs***

1. The arbitration panel shall fix the costs of arbitration in its ruling. The term 'costs' includes only:

- (a) the fees of the arbitration panel, to be stated separately for each arbitrator and to be fixed by the arbitration panel in accordance with the daily fees agreed by the Parties at the time the arbitrators were appointed;
- (b) travel and other expenses incurred by the arbitrators;
- (c) the costs of expert advice and of other assistance required by the arbitration panel;
- (d) travel and other expenses incurred by witnesses if such expenses are approved by the arbitration panel.

2. The costs of arbitration shall in principle be borne by the unsuccessful Party. However, the panel may apportion each of such costs between the Parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

3. No additional fees may be charged by an arbitration panel for interpreting, correcting or adding to its ruling.

#### *Article 32*

##### ***Deposit of costs***

1. The arbitration panel, upon its establishment, may request each Party to deposit an equal amount as an advance on the costs referred to in Article 31.

2. During the course of the arbitration proceedings, the arbitration panel may request supplementary deposits from the Parties.

3. If the required deposits are not paid in full within 30 days of the receipt of the request, the arbitration panel shall inform the Parties so that one or another of them may make the required payment. If such payment is not made, the arbitration panel may order the suspension or termination of the arbitration proceedings.

4. After the ruling has been made, the arbitration panel shall account for the deposits received from the Parties and return any unexpended balance to the Parties.