

Chapter 1000 Hearing and Awards for the Disputes related to Trading of Derivatives Contracts

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Procedures

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1003 Application Filing

***1003.01 Application Form for Dispute Settlement by Arbitrators**

The member or the client who wants to file an application for dispute settlement by arbitrators shall use an application form as specified by TFEX.

*(*Amended December 18, 2015, Force January 4, 2016)*

1003.02 Administrative costs and Arbitrator's Fees

On filing an application, the applicant shall deposit the administrative costs and arbitrator's fees together with an application with TFEX.

1003.03 Filing of the Application Process

(1) Upon receiving the application, TFEX will forward a copy of the application and supporting documents thereto to the opposing party so that such party may file an objection in the form prescribed by TFEX and to advise such party to appoint an arbitrator in writing.

(2) When the opposing party receives the copy of the application it shall file an objection and a counter claim (if any) with TFEX within 15 days and submit a letter appointing the arbitrator and the arbitrator's letter of acceptance within 30 days after receipt of the copy of the application.

(3) Upon receiving the objection from the opposing party under (2), TFEX will forward the copy of the objection and supporting documents thereto to the applicant and instruct the applicant in writing to appoint an arbitrator.

(4) When the applicant has been notified according to (3), it shall submit a letter appointing the arbitrator and the arbitrator's letter of acceptance to the Exchange within 15 days after receipt of the notice.

The Procedures of TFEX

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1003.04 Filing of the Objection or the Appointment of Arbitrators

The filing of the objection or the appointment of arbitrators of any party shall be done within the period prescribed by TFEX. If any party fails to do so within such period, TFEX may return the application to the applicant and dispose the case of the parties.

1003.05 Delivery of Pleadings, Notices and Documents

For the purpose of interpretation in these procedures, the service of the pleadings, notices and any other documents shall be deemed complete when the parties or their representatives have received the same in person or when the same is delivered to the domicile, residence or business address of the recipient.

TFEX shall make any delivery required under these procedures by answer back registered mail or other appropriate means.

***1004 The Hearing**

1004.01 Time and Place of Hearing

When the Arbitral Tribunal has been fully appointed, TFEX will determine time and place of the first hearing. The time and place of any subsequent hearing shall be determined by the Arbitral Tribunal.

1004.02 Hearing Proceedings

The Arbitral Tribunal has the authority to proceed the hearing as it deems appropriate by taking the principle of justice into account and providing the opportunity of the parties to present facts to support their claims as much as possible.

The parties in dispute may appoint representatives or other persons to assist in the arbitration proceedings. The parties in dispute shall submit the written notice informing the names and addresses of such representatives or assistants to TFEX in advance.

1004.03 Witnesses Examination

Unless agreed otherwise by the parties, the proceedings of witnesses examination shall be as follows:

(1) The parties shall submit documentary evidences supporting their claims to the Arbitral Tribunal on the first day of the hearing. Where deemed appropriate, the Arbitral Tribunal has the authority to order the parties to submit any other documents relating to the dispute.

(2) The witnesses examination shall be conducted by the Arbitral Tribunal. The Arbitral Tribunal shall make summary note of the witness testimony and procure the signatures of the witnesses thereon as evidence. Such testimony shall be collected in the case file.

The Arbitral Tribunal may allow the officials assigned by TFEX to assist in recording the testimonies.

1004.04 Duty to Produce Evidence

Any party who asserts a claim has the duty to produce evidence in support of its claim.

1004.05 Expert Opinion

The Arbitral Tribunal may request any expert to present the opinion, in which case the parties shall inform relevant facts as inquired by the expert.

Upon receiving the expert opinion, TFEX shall inform the parties of the details of such opinion. The parties may lodge the motion to question the expert. If the Arbitral Tribunal permits such motion, the procedures for witnesses examination under Rule 1004.03 shall apply *mutatis mutandis*.

1004.06 Adjournment of the Hearing

The Arbitral Tribunal may order the adjournment of the hearing as they deem appropriate or upon the reasonable request of any party.

1004.07 Hearing in Case of Absence of a Party

If any party fails to appear before the Arbitral Tribunal on the appointed date, the Arbitral Tribunal may proceed with the hearing and giving an award in the absence of the defaulting party as it deems appropriate.

The defaulting party shall be bound by the hearing and the award given under the first paragraph.

1004.08 Additional Hearing

Before giving an award, the Arbitral Tribunal may order additional hearing as they deem appropriate or upon request of any party.

*(*Amended December 18, 2015, Force January 4, 2016)*

***1005 The Arbitral Award**

1005.01 The Arbitral Award Process

The arbitral award shall be determined by the majority of the Arbitral Tribunal and shall be made in writing, signed by the Arbitral Tribunal and clearly stipulated the reason of such award. The copy thereof shall be given to the parties.

The arbitral award shall be made within 180 days after the appointment date of the last arbitrator, unless otherwise agreed by the parties.

1005.02 The Authority of the Arbitral Tribunal

The Arbitral Tribunal shall not give the award beyond the authority vested in them by the arbitration agreement agreed by the parties or the claims of the parties, except where the award is made in accordance with an agreement or compromise between the parties

1005.03 The Arbitral Award and Disclosure of Arbitral Award

The arbitral award shall be final and shall bind the parties upon the receipt of the copy thereof by the parties.

The Arbitral Tribunal and TFEX shall not disclose such arbitral award to the public except with the consent of the parties.

1005.04 Correction of Arbitral Award

If there is any minor mistake or error in the arbitral award, the Arbitral Tribunal may correct such award as they deem appropriate or as requested by the parties.

1005.05 Interpretation of Arbitral Award

If there is any reasonable question in connection with any statement in the arbitral award, any party may request the Arbitral Tribunal to interpret such statement within 15 days upon the receipt of the copy of such award. The interpretation shall be deemed as a part of the award and shall be proceeded as the arbitral award.

1005.06 Additional Arbitral Award

If any party considers that the material issue has not been settled, such party may request the Arbitral Tribunal to give additional award in respect thereof within 15 days upon the receipt of the copy of such award.

In case where the Arbitral Tribunal is of the opinion that such issue is material and has not been settled, they shall give the award in respect of such issue within 30 days from the submission of the request by a party.

Where the Arbitral Tribunal determine that the additional award shall not be made without additional hearing, the Arbitral Tribunal may order the parties to bring in additional evidence and witness for examination. In any event, the Arbitral Tribunal shall give the additional award within 60 days from the submission of the request by a party.

*(*Amended December 18, 2015, Force January 4, 2016)*

1006 Conciliation

***1006.01 Conciliation Procedures**

If any party deems it appropriate to take a conciliation prior to the arbitration proceedings, it shall be entitled to do so by complying with the followings:

(1) The party shall serve a notice to the other party proposing to first settle the dispute by conciliation.

(2) The mediation proceedings shall commence when the other disputing party has accepted the proposal to settle the dispute by conciliation. Such acceptance shall be made in writing.

(3) If the party proposing the conciliation has not received the acceptance from the other party within 15 days after receipt of the proposal by the other party or within the time specified in the proposal, it shall be deemed that the other party rejects such proposal and that such proposal is dropped.

*(*Amended December 18, 2015, Force January 4, 2016)*

1006.02 Temporarily Suspension of the Proceedings

During the conciliation proceedings, TFEX may temporarily suspend any action under these procedures.

1006.03 The conciliator

When the conciliation is sought, the parties shall jointly appoint a conciliator.

1006.04 Case Submitting

After appointment of the conciliator, each party shall submit its case in writing to the conciliator demonstrating the nature and issue of the dispute, a copy of which shall be sent to the other party.

1006.05 Request of Additional Fact

The conciliator is entitled to request any additional fact from any party as he deems appropriate.

1006.06 Principle of Justice

In the conciliation proceedings, the mediator shall apply the principle of justice taking into account the rights and obligations of the parties, commercial usage and other relevant circumstances including past practice between the parties.

1006.07 Witness Introducing

If necessary and on application by any party, the conciliator may allow such party to introduce witnesses, provided that the principle of speedy conciliation is taken into account.

1006.08 Compromise Agreement

After the parties agree to a compromise, the mediator shall draft a compromise agreement and the procure their signatures on such agreement.

1006.09 Termination of the Conciliation

The conciliation proceedings shall terminate when:

- (1) the parties sign the compromise agreement;
- (2) the conciliator deems it futile to continue the conciliation proceedings ;
- (3) any party deems it appropriate to end the conciliation proceedings and serves a notice to the other party to such effect.

1006.10 The Witness in the arbitration proceedings or in the court

The parties shall not introduce the acknowledgment of the other party or any proposal or pinion of the conciliator as evidence in the arbitration proceedings or in any court.

1006.11 Costs of the Conciliation and the Conciliator's fees

The parties shall be equally responsible for the costs of the conciliation, unless otherwise agreed.

The conciliator's fees shall be fixed by the parties and the conciliator.

1007 Administrative Costs and Fees

1007.01 Rate of Administrative Costs

Rate of administrative costs shall vary according to the amount of claim at the rate of 1 % of the amount of claim, but shall not exceed Baht 10,000.

1007.02 Rate of Arbitrator's fees

Rate of arbitrator's fees shall vary according to the amount of claim as follows:

Amount of Claim			Arbitrator's Fee	
not exceeding Baht 500,000	:	2.5%	but not less than Baht	10,000
Baht 500,001-1,000,000	:	2%	but not less than Baht	12,500
Baht 1,000,001-5,000,000	:	1.5%	but not less than Baht	20,000
Baht 5,000,001-10,000,000	:	1%	but not less than Baht	75,000
Baht 10,000,001-50,000,000	:	0.5%	but not less than Baht	100,000
more than Baht 50 Million	:	Baht 250,000		

In the calculation the fraction shall be rounded upward.

1007.03 Costs and Fees Refund

TFEX will refund the administrative costs under Rule 1007.01 and the arbitrator's fees under Rule 1007.02 only in the following cases:

(1) In case where TFEX returns the application to the applicant following withdrawal of the application by the applicant prior to the time TFEX sends the application to the other party, or the other party has not agreed to settle the dispute by arbitration, or fails to appoint arbitrators, all administrative costs and arbitrator's fees will be refunded in full.

(2) In the case where TFEX returns the application to the applicant following withdrawal of the application after TFEX has sent the application to the other party but before the last arbitrator has been appointed, or in case where mediation proceedings are successful, the arbitrator's fees only will be refunded in full.

1007.04 Arbitrators' fees Allocation

The arbitrator's fees under Rule 1007.02 shall be distributed equally to each arbitrator.

1008 Miscellaneous

1008.01 Calculation of the Period of Time

The calculation of the period of time under these procedures shall not include the first day of such period. If the last day of the period is a holiday, the period shall be extended to the subsequent business day.

1008.02 Withdrawal of the Application

The applicant may withdraw its application by submission of a request in writing to TFEX unless the withdrawal of application is made after the other party has submitted his objection, in which case prior consent of the other party shall be required.

1008.03 Case Disposing

In case where the parties fails to do any act or to contact TFEX for a period exceeding 1 year, TFEX may dispose the case of such party without refunding the administrative costs and arbitrator's fees or any expenses deposited with TFEX.

1008.04 Period Extension

TFEX may extend the periods prescribed in this Chapter when it deem appropriate or when any party reasonably requests.
