

**NETHERLANDS  
ARBITRATION INSTITUTE**

**BINDING ADVICE RULES**  
in force as of 1 January 2015

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# NAI BINDING ADVICE RULES

## SECTION ONE - GENERAL

### Article 1 - Definitions

In these Rules, the following terms and expressions shall have the following meanings:

- (a) “administrator”: the director of the NAI as provided for in the NAI’s articles of association and, in the director’s absence, the member of the executive board designated by the executive board to that end, or an acting administrator appointed as such by the executive board;
- (b) “executive board”: the executive board of the NAI;
- (c) “binding advice agreement”: an agreement by which the parties, to end or prevent any uncertainty or dispute about what applies between them at law, mutually bind themselves to a determination thereof by a decision assigned to the advisor, which determination need not be based on contract and in which assignment the binding advisor may be authorised to supplement or amend the legal relationship by way of binding advice;
- (d) “binding advisor”: a binding advisor or a council of multiple binding advisors that has been composed in accordance with the provisions of these Rules;
- (e) “council”: multiple binding advisors that have been appointed in accordance with the provisions of these Rules;
- (f) “Committee”: the committee appointed by the NAI Executive Board that decides on challenge requests as referred to in Article 19;
- (g) “NAI”: the Netherlands Arbitration Institute (Stichting Nederlands Arbitrage Instituut);
- (h) “Rules”: the binding advice rules of the NAI;
- (i) “documents”: procedural and other documents, including data on a data carrier as well as data presented by electronic means;
- (j) “respondent”: one or more respondents;
- (k) “applicant”: one or more applicants;

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- (l) “chair”: the chair of the council appointed in accordance with Articles 13 or 14 and, in the event one binding advisor is appointed, the binding advisor where permitted by the context of the provision; and
- (m) “claim”: a claim of a party, or a request or question of a party to the binding advisor, on which the binding advisor shall decide.

### **Article 2 - Scope**

These Rules shall apply if the parties have referred to binding advice proceedings by or before the NAI or in accordance with the Rules of the NAI.

### **Article 3 - Communications**

1. Requests and communications shall be made or confirmed in writing in the manner provided for in this article.

2. Unless the sender is unable to do so, all requests, communications and other documents to the administrator, the Committee and/or the NAI shall only be sent electronically by e-mail to the address [secretariaat@nai-nl.org](mailto:secretariaat@nai-nl.org) or to any other address to be specified by the NAI.

3. The time at which a request or communication is received electronically by the administrator, the Committee and/or the NAI shall be the time at which the request or the communication has reached a data processing system for which the NAI is responsible.

4. The NAI shall send a request or communication addressed to one or more addressees electronically by e-mail if the addressee, by providing its e-mail address, has communicated that it may be reached for these purposes by such means.

5. After sending the binding advice file to the binding advisor, the parties shall send their requests, communications and other documents directly to the binding advisor while at the same time sending a copy to all parties. A copy of each request, communication or other document shall be sent to the administrator at the same time. The same applies to requests, communications or documents from the binding advisor to the parties and between the parties, it being understood that, in the latter event, a copy must also be sent to the binding advisor.

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6. Unless the binding advisor decides otherwise, all requests, communications or other instruments in writing between the parties and binding advisor shall be sent in electronic form by e-mail if the parties, by providing their e-mail addresses, have communicated that they may be reached for these purposes by such means.

7. The time at which a request, communication or other document is received electronically by the binding advisor shall be the time at which the request, the communication and/or the other document has reached a data processing system for which the binding advisor (or one of the members of the council) is responsible.

8. The time at which a request, communication or other document is sent electronically by the binding advisor, the administrator, the Committee and/or the NAI shall be the time at which the message has reached a data processing system for which the binding advisor, or the NAI, is not responsible.

### **Article 4 - Time limits**

1. For the purposes of these Rules, a time limit shall commence on the day a request or communication is sent or, if not sent in electronic form as provided for in Article 3, on the day of receipt of a request or communication, unless explicitly provided otherwise in these Rules or by the binding advisor.

2. In special events, the administrator shall be authorised to extend or to shorten the time limits mentioned in Articles 8(4), 13(1), 13(2), 13(3), 13(4), 14(2), 46(5) and 48(6) at the request of a party or of his own motion.

3. In special events, the binding advisor shall be authorised to extend a time limit set by him or agreed by the parties at the request of a party or of his own motion.

### **Article 5 - Language**

1. The binding advice proceedings shall be conducted in the language or languages agreed by the parties or, in the absence of such agreement, in the language or languages determined by the binding advisor.

2. Until such time that the binding advisor has determined the language or languages as referred to in the first paragraph, at the request of the other party or of his own motion, the administrator may require a party to submit a translation of the requests, communications and other documents it has submitted in a language in which the other party is proficient, and in a form and within a time limit as determined by the administrator.

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3. Without prejudice to the provisions of paragraph 1 and paragraph 2, if any request, communication or other document is written in a language in which the administrator or the binding advisor is not proficient, the administrator and, after acceptance of the mandate, the binding advisor may require the party making the request or the communication or submitting the document to provide a translation in a language, in a form and within a time limit as determined by the administrator or the binding advisor.

### **Article 6 - Confidentiality**

Binding advice proceedings are confidential and all persons involved either directly or indirectly shall be bound to secrecy, except and insofar as disclosure ensues from the law or the parties' agreement.

## SECTION TWO - COMMENCEMENT OF BINDING ADVICE PROCEEDINGS

### **Article 7 - Request for binding advice**

1. Binding advice proceedings shall be commenced by submitting a request for binding advice to the administrator. Binding advice proceedings shall be deemed to have been commenced on the day of receipt of the request for binding advice by the administrator.

2. The request for binding advice shall contain the following particulars:

- (a) the name, the address, the place of residence, the telephone number, the e-mail address and, as applicable, the VAT number of each of the parties;
- (b) the name, the address, the place of residence, the telephone number and the e-mail address of the person or persons representing the applicant in the binding advice proceedings;
- (c) the e-mail address at which the applicant may be reached for electronic communication for the duration of the binding advice proceedings;
- (d) a brief description of the uncertainty or the dispute;
- (e) a clear specification of the claim along with, if possible, a specification of the monetary interest of each of the claims;

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- (f) a reference to the binding advice agreement and any other agreement(s) to which the binding advice proceedings relate, along with copies of the relevant agreements;
- (g) insofar as already appointed, the name, the address, the place of residence, the telephone number and the e-mail address of the binding advisor(s) appointed by the applicant or the parties;
- (h) the method of appointment of the binding advisor if the parties have agreed a method of appointment that deviates from Article 13, paragraphs 1 to 4, inclusive;
- (i) the arrangements between the parties, or the applicant's preference, in respect of the number of binding advisors, the qualifications of the binding advisors and the language of the binding advice proceedings; and
- (j) insofar as applicable, any other particulars concerning the binding advice proceedings.

3. The request for binding advice shall be submitted in the manner provided for in Article 3(2). If the applicant is unable to do so, the request for binding advice may be submitted in another manner. The administrator shall be authorised to suspend handling the request as long as it does not satisfy the requirements mentioned in paragraph 2. Suspension shall not prejudice the provisions of paragraph 1.

4. The administrator shall confirm receipt of the request for binding advice to the applicant, stating the date of receipt.

### **Article 8 - Short answer**

1. The administrator shall send a copy of the request for binding advice to the respondent, stating the date of receipt, and shall invite the respondent to submit a short written answer in response.

2. The short answer shall contain the following information:

- (a) the name, the address, the place of residence, the telephone number, the e-mail address and, as applicable, the VAT number of the respondent;
- (b) the name, the address, the place of residence, the telephone number and the e-mail address of the person or persons representing the respondent in the binding advice proceedings;

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- (c) the e-mail address at which the respondent can be reached for electronic communication for the duration of the binding advice proceedings;
- (d) a reply to the information referred to in Article 7(2)(e), (f), (g) insofar as an appointment by the parties is concerned, (h) and (i) and, insofar as applicable, the respondent's preference in respect of the number of binding advisors, the qualifications of binding advisors and the language of the binding advice proceedings;
- (e) insofar as applicable, the name, the address, the place of residence, the telephone number and the e-mail address of the binding advisor appointed by the respondent; and
- (f) insofar as applicable, any other particulars concerning the binding advice proceedings.

3. The respondent may also present its own claim against the applicant in the short answer, with due observance of the provisions of Article 24(2). The requirements mentioned in Articles 7(2)(d), (e) and (f) shall apply *mutatis mutandis* in that event.

4. The short answer shall be submitted within fourteen days of the invitation referred to in paragraph 1 in the manner provided for in Article 3(2), a copy of which shall be sent to the applicant at the same time. If it is not possible for the respondent to send the short answer electronically, it may be submitted in another manner within this time limit, while sending a copy to the applicant at the same time. The administrator shall confirm receipt of the short answer to the parties.

### **Article 9 - Purport of the request for binding advice and the short answer**

1. The request for binding advice and the short answer do not prejudice the parties' right to present a statement of claim and a statement of defence, respectively, with due observance of the provisions of Article 23.

2. Insofar as the administrator is involved in the determination of the number and/or the appointment of the binding advisor(s), the administrator shall derive the necessary information from the request for binding advice and the short answer.

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### **Article 10 - Plea as to the non-existence of a binding advice agreement**

1. By cooperating in the appointment of the binding advisor in the manner provided for in Section Three, the parties shall not forfeit the right to rely on the non-existence of a valid binding advice agreement.
2. A respondent that has appeared in the binding advice proceedings and that wishes to rely on the non-existence of a valid binding advice agreement must do so before submitting any defence, specifically in the statement of defence or, in the absence thereof, by the first written or oral defence after acceptance of the mandate by the binding advisor at the latest.
3. If a respondent has failed to raise a plea in accordance with the provisions of the previous paragraph, its right to rely on this later, in the binding advice proceedings or before the court, shall be forfeited.
4. The binding advisor shall rule on his lack of jurisdiction due to the non-existence of a valid binding advice agreement.
5. A binding advice agreement shall be considered and decided upon as a separate agreement. The binding advisor shall have the power to decide on the existence and the validity of the main contract of which the binding advice agreement forms part or to which it is related.
6. A plea as to the non-existence of a valid binding advice agreement shall not prevent the NAI from administering the binding advice proceedings.

## **SECTION THREE - THE BINDING ADVISOR**

### **Article 11 - The binding advisor**

1. Any natural person of legal capacity may be appointed as binding advisor. No person shall be precluded from appointment by reason of their nationality.
2. A binding advisor shall perform his mandate independently, impartially and to the best of his knowledge and ability.
3. A person approached to be engaged as a binding advisor

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who has reason to suspect that there could be justifiable doubts as to his impartiality or independence shall communicate the same in writing to the person who approached him, stating the suspected reason(s).

4. A person who intends to accept his mandate shall, prior to the confirmation of appointment as provided for in Article 16(1), sign a statement confirming his independence and impartiality, availability and acceptance of the mandate on condition of confirmation by the administrator and send this statement to the administrator. Any communication as referred to in paragraph 3 that has been sent shall be included in the statement. The administrator shall send a copy of the statement to the parties and, if multiple binding advisors are appointed, to the other binding advisors.

5. A binding advisor who, during the binding advice proceedings, suspects that there could be justifiable doubts as to his impartiality or independence shall communicate the same in writing to the administrator, the parties and, if multiple binding advisors are appointed, to the other binding advisors, stating the suspected reason(s).

### **Article 12 - Number of binding advisors**

If the parties have not agreed the number of binding advisors, or if the agreed method of determining that number is not carried out and the parties cannot reach agreement on the number, the administrator shall set the number at one or three, taking account of the parties' preference, the scope of the dispute, the complexity of the case and the parties' interest in efficient binding advice proceedings.

### **Article 13 - Appointment of the binding advisor**

1. If one binding advisor must be appointed, the parties, if no joint appointment has become evident by the short answer at the latest, shall notify the administrator of the name, the address, the place of residence, the telephone number and the e-mail address of the binding advisor jointly appointed by them within fourteen days after a request from the administrator to that end. If such a notice is not received within this period, the binding advisor shall be appointed in accordance with the provisions of Article 14.

2. If multiple binding advisors must be appointed, the applicant and the respondent shall each appoint a binding advisor. Any party that has not yet appointed a binding advisor shall appoint a binding advisor, stating the name, the address, the place of residence, the telephone number and the e-mail address of the binding advisor appointed, within fourteen days

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after a request from the administrator to that end. If no notice of such an appointment is received within this period, the binding advisor shall be appointed in accordance with the provisions of Article 14, it being understood that the list shall only be sent to the party that did not appoint a binding advisor on time.

3. If three binding advisors must be appointed, the two binding advisors appointed in accordance with Article 13(2) shall jointly appoint a chair, stating the name, the address, the place of residence, the telephone number and the e-mail address of the chair, within fourteen days after a request from the administrator to that end. If no notice of such an appointment is received within this period, the chair shall be appointed in accordance with the provisions of Article 14.

4. If the parties have agreed a method of appointment of the binding advisor that deviates from the procedures provided for in this Article 13 or in Article 14, the appointment shall take place in the manner as agreed by the parties. If this method of appointment is not, or not entirely, performed within the time limit agreed by the parties or, in the absence of such time limit, within four weeks after the binding advice proceedings have been commenced, the appointment of the binding advisor shall take place in accordance with paragraphs 1 to 3, inclusive, of this article.

### **Article 14 - List procedure**

1. In derogation of the method of appointment provided for in Article 13, the parties may agree that the binding advisor(s) shall be appointed in accordance with the list procedure provided for in this Article 14. In that event, the administrator shall send the list referred to in paragraph 2 as soon as possible after receipt of the short answer or, in the absence thereof, after expiry of the time limit for submitting the short answer.

2. The administrator shall send each of the parties an identical list of persons' names. This list shall contain at least three names in the event that one binding advisor is to be appointed, at least six names if two binding advisors are to be appointed and at least nine names, three of which being prospective chairs, in the event that three binding advisors are to be appointed. A party may delete from the list the names of persons against whom this party has strong objections, and may number the remaining names in its order of preference. If the administrator has not received a list back from a party within fourteen days, it shall be assumed that all of the persons named on the list are equally acceptable to that party as binding advisor.

3. With due observance of the preferences and/or objections

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expressed by the parties, the administrator shall invite persons named on the list to serve as binding advisors. If the returned lists show that there are an insufficient number of persons on those lists who are acceptable as binding advisor to each of the parties, or a person will not or cannot accept the administrator's invitation to serve as binding advisor or proves unable to serve as binding advisor for any other reasons and an insufficient number of persons remain on the returned lists that are acceptable as binding advisors to each of the parties, the administrator shall be authorised to directly appoint one or several other persons as binding advisor.

### **Article 15 - Appointment in the event of multiple applicants and/or respondents**

1. If there are multiple applicants and/or respondents and the appointment of the binding advisor shall take place in the manner provided for in Article 13, each of the joint applicants and the joint respondents shall appoint a binding advisor if more than one binding advisor must be appointed.

2. If the joint applicants or the joint respondents fail to appoint a binding advisor within the time limit set out in Article 13(2), all binding advisors shall be appointed in the manner provided for in Article 14.

### **Article 16 - Confirmation of appointment**

1. The appointment of a binding advisor under the provisions of this section shall be confirmed by the administrator after receipt of the statement referred to in Article 11(4), unless the binding advisor, in the administrator's opinion, offers insufficient safeguards for sound binding advice proceedings.

2. If the administrator does not confirm an appointment, he shall request the party that was entitled to appoint the binding advisor or the binding advisors appointed by the parties to appoint a different binding advisor or chair or, if the parties have so agreed, to appoint a different binding advisor or chair in accordance with the list procedure provided for in Article 14 within fourteen days. If the administrator refuses to confirm the appointment of the new binding advisor, the right of appointment shall lapse and the administrator shall directly appoint the relevant binding advisor.

### **Article 17 - Release from mandate**

1. A binding advisor who has accepted his mandate may, at his own request, be released from his mandate either with the consent of the parties or by the administrator.

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2. A binding advisor who has accepted his mandate may be released from his mandate by the parties jointly. The parties shall immediately notify the binding advisor and the administrator of the release.

3. A binding advisor who has accepted his mandate and who has become unable de jure or de facto to perform his mandate may, at the request of any party, be released from his mandate by the administrator.

4. A binding advisor who has accepted his mandate may be released from his mandate by the administrator of his own motion if he (i) has become unable de jure or de facto to perform his mandate, or (ii) does not perform his mandate in accordance with these Rules.

5. The binding advisor who has accepted his mandate may, at the request of any of the parties, be released from his mandate by the administrator if, taking account of all the circumstances, he performs his mandate in an unacceptably slow manner despite reminders.

6. In the events mentioned in paragraphs 1, 3, 4 and 5, the administrator shall not proceed to release from the mandate until the parties have been given the opportunity to make their views known to him.

### **Article 18 - Replacement of a binding advisor**

1. Unless the parties have agreed another manner of replacement, a binding advisor who has been released from his mandate for any reason whatsoever shall be replaced pursuant to the rules applicable to the original appointment. The same shall apply in the event of the death of a binding advisor.

2. The binding advice proceedings shall be suspended for the duration of the replacement. After replacement, the binding advice proceedings shall continue from the stage they had reached, unless the binding advisor wishes to handle the case again in full or in part.

### **Article 19 - Challenge**

1. A binding advisor may be challenged by a party in accordance with the provisions of this article if there are justifiable doubts as to his impartiality or independence.

2. A party may only challenge a binding advisor appointed by that party for reasons of which that party became aware after the appointment was made. A party may not challenge a binding advisor appointed in accordance with Article 13(3) or Article 14 if it has acquiesced in this appointment, unless that

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party only became aware of the ground for the challenge afterwards.

3. The challenging party shall give written notice of the challenge, stating reasons, to the binding advisor concerned, the other party, the administrator and, if multiple binding advisors have been appointed, the other binding advisors. The notice shall be given within fourteen days of the communication referred to in Articles 11(3), 11(4) or 11(5) or, in other events, within fourteen days after the reason for the challenge becomes known to the challenging party.

4. The binding advisor may suspend the binding advice proceedings from the day of receipt of the notice, as referred to in paragraph 3, or afterwards, pending the challenge procedure, from the moment that the binding advisor considers appropriate.

5. If a challenged binding advisor does not resign within fourteen days after the day of receipt of a timely notice as referred to in paragraph 3, the Committee shall, at the request of the most diligent party, decide as soon as possible whether the challenge is well founded. The Committee may give the binding advisor who has been challenged and the parties the opportunity to be heard. The decision shall be sent by the administrator to the parties, the binding advisor and, if multiple binding advisors have been appointed, the other binding advisors.

6. If the challenged binding advisor resigns or if the Committee finds the challenge to be well founded, the challenged binding advisor shall be replaced in accordance with Article 18(1).

7. If a challenged binding advisor resigns, this does not imply acceptance that the reasons for the challenge are well-founded.

8. A party that has reasons to challenge a binding advisor shall base a challenge request in accordance with the provisions of this article on these reasons, on pain of forfeiture of the right to invoke them later in the binding advice proceedings or in court.

### **Article 20 - Secretary**

At the request of the binding advisor, the administrator may appoint a lawyer as the binding advisor's secretary. The provisions of Articles 11, 16 and 19 shall apply mutatis mutandis.

## SECTION FOUR - THE PROCEDURE

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### Article 21 - Procedure in general

1. The binding advisor shall determine the manner in which and the time limits within which the binding advice proceedings will be conducted, with due observance of any arrangements between the parties in that regard and the provisions of these Rules and having regard to the circumstances of the binding advice proceedings.

2. The binding advisor shall treat the parties equally. The binding advisor shall give the parties the opportunity mutually to set out and explain their positions and to comment on each other's positions and on all documents and other information brought to the attention of the binding advisor during the proceedings.

3. The binding advisor shall guard against unreasonable delay of the binding advice proceedings and, if necessary, at the request of a party or of his own motion, take measures.

4. At any stage of the binding advice proceedings, at the request of a party or of his own motion, the binding advisor may hold a meeting with the parties to discuss the course of the proceedings and/or further determine the disputed points of fact and law.

5. If a party fails to wholly or partially satisfy any provision mentioned in Section Four or any order, decision or measure of the binding advisor under the provisions of Section Four, the binding advisor may draw any conclusions from such failure that he considers appropriate.

6. Each party may appear in the binding advice proceedings in person, or be represented by a practising lawyer or by a representative expressly authorised in writing for this purpose. Each party may be assisted by any persons of its choice.

7. The binding advisor may hold hearings, deliberate and hear witnesses and experts at any place, within or outside the Netherlands, as he considers appropriate. Except in the events provided for in Articles 26(2) and 31, if more than one binding advisor has been appointed, hearings shall be held in the presence of all binding advisors.

8. If more than one binding advisor has been appointed, procedural matters of minor importance may be decided by the chair.

9. Instead of a personal appearance of a witness, an expert or a party, the binding advisor may determine that the relevant person

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have direct contact with the binding advisor and, insofar as applicable, with others by electronic means. The binding advisor shall determine, in consultation with those concerned, which electronic means shall be used to this end and in which manner this shall occur.

### **Article 22 - File dispatch and determination of rules of procedure**

1. After the appointment of all binding advisors has been confirmed, the administrator shall send the binding advice file to the binding advisor.
2. As soon as possible after receipt of the binding advice file, the binding advisor shall determine the rules of procedure following consultation with the parties, including a (provisional) schedule for the further course of the binding advice proceedings.

### **Article 23 - Exchange of statements**

1. Unless the parties have agreed otherwise, the binding advisor shall give the applicant and the respondent the opportunity to present a statement of claim and a statement of defence, respectively.
2. Unless the parties have agreed otherwise, the binding advisor shall be free to determine whether any further statements may be presented.

### **Article 24 - Respondent's claim**

1. A respondent's claim shall be admissible if it is subject to the same binding advice agreement as the one on which the request for binding advice is based or if that same binding advice agreement has been expressly or tacitly declared applicable by the parties.
2. If a respondent's claim has not been presented at the latest with the statement of defence or, in the absence thereof, with the first written or oral defence after the binding advisor has accepted his mandate, it cannot be presented afterwards in the same binding advice proceedings except in special circumstances at the binding advisor's discretion.
3. Articles 10, 23, 32 and 34 shall apply mutatis mutandis to respondent's claim.

### **Article 25 - Hearing**

1. The binding advisor shall give the parties the opportunity

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to explain their case at an oral hearing, unless the parties waive that opportunity.

2. The binding advisor shall determine the time and place of the hearing.

3. In addition to the parties and persons mentioned in Articles 20, 21(6), 28 and 29, the binding advisor may admit other persons to the hearing after he has heard the parties in that regard.

### **Article 26 - Evidence in general**

1. The binding advisor shall be free to determine the rules of evidence, the admissibility of evidence, the division of the burden of proof and the assessment of evidence, unless the parties have agreed otherwise.

2. Having heard the parties, the council may designate its chair to hear witnesses or experts or to conduct an on-site examination or viewing, unless the parties have agreed otherwise.

### **Article 27 - Production of documents**

1. Unless the parties have agreed otherwise, the statements referred to in Article 23 shall, insofar as possible, be accompanied by the documents relied upon by the parties.

2. The binding advisor may, at the request of any of the parties or of his own motion, order the inspection of a copy of or an extract from specific documents that the binding advisor deems relevant for the dispute from the party which has these documents at his disposal, unless the parties have agreed otherwise. The binding advisor shall determine the conditions under which and the manner in which inspection of a copy of or an extract from documents are provided.

### **Article 28 - Witnesses and experts**

1. The binding advisor may allow the parties to furnish evidence by hearing witnesses and experts or, at the request of any of the parties or of his own motion, may order the parties to furnish evidence by hearing witnesses and experts.

2. The binding advisor may determine the form in which statements of witnesses and experts are given. A party shall be free to submit written witness statements or expert advice it has obtained along with the statements referred to in Article 23. If a party so requests or if the binding advisor so determines, the party submitting the advice shall call the expert to provide a further explanation at the hearing.

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3. If an oral examination of witnesses or experts takes place, the binding advisor shall determine the time, place and order for the oral examination and the manner in which the examination will be conducted.
4. The names of the witnesses or experts that a party wishes to have heard shall be communicated to the binding advisor and the other party in a timely manner.
5. The binding advisor shall decide whether and in what form a report of the examination will be drafted. If the chair hears the witnesses or experts in accordance with Article 26(2), a report of the examination shall in any event be drafted.

### **Article 29 - Assistance to the binding advisor**

1. The binding advisor may appoint one or more experts to give written advice. The binding advisor shall consult the parties regarding the terms of reference to be issued to the experts. The binding advisor shall send the parties a copy of the appointment and the terms of reference of the experts as soon as possible.
2. If a party does not provide the expert with the information he requires or render the cooperation he needs, the expert may request that the binding advisor order the relevant party to do so.
3. After receipt of the expert's report, the binding advisor shall send a copy thereof to the parties as soon as possible.
4. At the request of any of the parties, the experts shall be heard at a hearing of the binding advisor. If a party wishes to make such a request, it shall so notify the binding advisor and the other party as soon as possible. At the hearing, the binding advisor shall give the parties the opportunity to ask the experts questions and to present their own experts.
5. Without prejudice to the provisions in paragraph 4, the binding advisor shall give the parties the opportunity to be heard regarding the advice of the experts appointed by the binding advisor.
6. The binding advisor may call in technical assistance in the binding advice proceedings and make arrangements for the presence of an interpreter at the hearing.

### **Article 30 - On-site inspection**

The binding advisor may, at the request of any of the parties or of his own motion, examine a local situation or conduct a viewing, within or outside the Netherlands. The binding advisor shall give the parties the opportunity to be present at the on-site examination

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or viewing.

### **Article 31 - Personal appearance of the parties**

At any stage of the proceedings, the binding advisor may order the parties to appear at a hearing in person for the purpose of providing information or attempting to arrive at a settlement. Having heard the parties, the council may designate its chair to hold the hearing, unless the parties have agreed otherwise.

### **Article 32 - Amendment of claim**

1. A party may amend or increase its claim or the grounds thereof until the beginning of the last hearing or, if no hearing is held, in the last admissible statement at the latest. This shall not be permitted afterwards, except in special events at the binding advisor's discretion. A party may reduce its claim at any time.

2. The other party is authorised to object to an amendment or increase if it will be unreasonably hindered in its defence or the binding advice proceedings will be unreasonably delayed as a result. Having heard the parties, the binding advisor shall decide on the other party's objection as soon as possible.

3. In the event of a party's non-appearance as referred to in Article 34, the binding advisor shall give this party the opportunity to comment on an amendment or increase.

### **Article 33 - Withdrawal of a request for binding advice**

1. The applicant may withdraw its request for binding advice as long as the respondent has not presented a statement of defence as referred to in Article 23 or, if there is no exchange of written statements, as long as no hearing has been held.

2. Afterwards, the request for binding advice may only be withdrawn with the respondent's permission, without prejudice to the provisions of Articles 46(5) and 48(6).

3. The administrator and, after acceptance of his mandate, the binding advisor shall confirm the withdrawal through the intervention of the administrator.

### **Article 34 - Default of a party**

1. If the applicant fails to present a statement of claim as referred to in Article 23 within the time limit determined by the binding advisor or to reasonably explain its claim within a time limit determined by the binding advisor in accordance with an order of the binding advisor, without asserting well-founded reasons, the binding advisor may bring an end to the binding

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advice proceedings by a decision in writing.

2. If the respondent fails to present a statement of defence as referred to in Article 23 within the time limit determined by the binding advisor, without asserting well-founded reasons, the binding advisor may immediately give binding advice.

3. In the binding advice referred to in the second paragraph, the applicant's claim shall be awarded, unless it appears to the binding advisor to be unlawful or unfounded. The binding advisor may, before giving his binding advice, require proof from the applicant of one or more of its assertions.

4. If a party, although reasonably having been called, fails to appear at the hearing without asserting well-founded reasons, the binding advisor may continue the binding advice proceedings and give binding advice.

### **Article 35 - Joinder and intervention**

1. At the written request of a third person who has an interest in binding advice proceedings to which these Rules apply, the binding advisor may allow that person to join or intervene in the proceedings, provided that the same binding advice agreement as between the original parties applies or enters into force between the parties and the third person. By the allowance of the joinder or intervention, the third person shall become a party to the binding advice proceedings.

2. The request shall be submitted to the administrator. The administrator shall send a copy of the request to the parties and to the binding advisor as soon as possible.

3. The binding advisor shall give the parties the opportunity to make their opinions on the request known. The binding advisor may give the third person the opportunity to make its opinion on the request known.

4. The binding advisor may suspend the binding advice proceedings after receipt of a request as referred to in paragraph 1. After the lifting of the suspension or allowance of a joinder or an intervention, the binding advisor shall arrange the further course of the binding advice proceedings, unless the parties have made provision for this by agreement.

5. Regardless of whether the same binding advice agreement as between the original parties applies or enters into force between the parties and the third person, by submitting the request for joinder or intervention, the third person agrees that the provisions of Section Six and Article 53 shall apply.

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### **SECTION FIVE - THE BINDING ADVICE**

#### **Article 36 - Time limit**

1. At the end of the hearing as referred to in Article 25, the binding advisor shall communicate to the parties at which time the binding advisor will give his binding advice. If the parties decided not to hold a hearing as referred to in Article 25, the notice shall be sent after presentation of the last statement. The binding advisor shall be authorised to extend the time limit one or more times if necessary. In any event the binding advisor shall decide expeditiously.

2. The mandate to the binding advisor shall continue until his final binding advice is sent to the parties.

#### **Article 37 - Measure for decision-making**

1. If and insofar as applicable given the nature of the requested binding advice, the binding advisor shall decide in accordance with the rules of law.

2. If the binding advisor decides according to the rules of law and a choice of law has been made by the parties, the binding advisor shall decide in accordance with the rules of law designated by the parties and, failing such designation of law, in accordance with the rules of law which he considers appropriate.

3. The binding advisor shall decide as amiable compositeur if the parties, by agreement, have authorised him to do so.

4. In any event, in his decision the binding advisor shall take into account any applicable trade usages.

#### **Article 38 - Decision and signing**

1. If more than one binding advisor has been appointed, the binding advisors shall decide by a majority of votes.

2. The binding advice shall be drawn up in quadruplicate in writing and signed by the binding advisor(s).

3. If a minority of the binding advisors refuses to sign, this shall be stated by the other binding advisors in the binding advice signed by them. A similar statement shall be made if a minority is incapable of signing and it is unlikely that the impediment will cease to exist shortly.

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### **Article 39 - Contents of the binding advice**

1. The binding advice shall in any event contain:
  - (a) the name and the place of residence of the binding advisor(s);
  - (b) the name and the place of residence of each of the parties;
  - (c) a brief summary of the binding advice proceedings;
  - (d) a description of the claim and, if submitted, of the respondent's claim;
  - (e) the reasons for the binding advice given;
  - (f) the determination of the binding advice costs and the order which of the parties shall pay the binding advice costs as referred to in Article 50;
  - (g) the binding advice; and
  - (h) the date on which the binding advice is given.
2. If the binding advice is a partial binding advice or an interim binding advice, the determination of and the order who shall pay the binding advice costs mentioned in paragraph 1(f) may be stayed until a later point in the proceedings.
3. In derogation of the provisions of paragraph 1(e), the binding advice shall contain no grounds for the decision given if, after the binding advice proceedings have been commenced, the parties agree in writing that no grounds shall be given for the decision.

### **Article 40 - Sending of the binding advice**

1. The administrator shall ensure that an original of the binding advice, or a copy thereof certified by a binding advisor or by the administrator, is sent to the parties.
2. An original of the binding advice shall remain in the NAI archives for a period of ten years. During that period, each of the parties may request the administrator to provide a certified copy of the binding advice at cost.

### **Article 41 - Binding effect of the binding advice**

Binding advice shall be binding upon the parties with effect from the day on which it is given. By agreeing binding advice

## NAI BINDING ADVICE RULES

proceedings before or by the NAI or according to the Rules of the NAI, the parties shall be deemed to have accepted the obligation to comply with the binding advice as soon as possible.

### **Article 42 - Rectification of the binding advice**

1. A party may, within two months after the date of the binding advice, request that the binding advisor correct a manifest computing error, clerical error or other error that lends itself to simple rectification in the binding advice.

2. If the particulars referred to in Article 39(1)(a), (b) and (h) are stated incorrectly or are partially or wholly absent from the binding advice, a party may, within two months after the date of the binding advice, request that the binding advisor corrects such particulars.

3. The request shall be submitted to the administrator. The administrator shall send a copy of the request to the binding advisor and the other party as soon as possible.

4. The binding advisor may, within two months after the date of the binding advice, also of his own motion, proceed to the correction referred to in paragraph 1 and paragraph 2.

5. Before the binding advisor decides on the request referred to in paragraph 1 or paragraph 2, or decides of his own motion to proceed to the correction as referred to in paragraph 4, he shall give the parties the opportunity to comment on the matter.

6. If the binding advisor proceeds to the correction, it shall be mentioned by the binding advisor in a separate document, which document shall be considered to be a part of the binding advice. The document shall be drawn up in quadruplicate and shall contain:

- (a) the particulars stated in Article 39(1) (a) and (b);
- (b) a reference to the binding advice to which the rectification relates;
- (c) the correction;
- (d) the date of the correction, it being understood that the date of the binding advice to which the correction relates remains decisive; and
- (e) a signature to which the provisions of Article 38 apply.

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7. The administrator shall ensure that the document referred to in paragraph 6 will be sent to the parties as soon as possible; the provisions of Article 40(1) shall apply mutatis mutandis.

8. If the binding advisor denies the request for the correction, he shall so notify the parties by intervention of the administrator.

### **Article 43 - Additional binding advice**

1. Within two months after the date of the binding advice, any party may request the binding advisor to give an additional binding advice as to any one or more claims presented to the binding advisor but not decided by him.

2. The request shall be submitted to the administrator. The administrator shall send a copy of the request to the binding advisor and the other party as soon as possible.

3. Before the binding advisor decides on the request, he shall give the parties the opportunity to comment on the matter.

4. An additional binding advice shall constitute binding advice to which the provisions of this section shall be applicable.

5. If the binding advisor denies a request for an additional binding advice, he shall so notify the parties by intervention of the administrator.

### **Article 44 - Publication of the binding advice**

The NAI shall be authorised to have the binding advice published without stating the names of the parties and leaving out all other information that might reveal the parties' identities, unless a party objects to such publication with the administrator within two months of the date of the binding advice.

## **SECTION SIX - COSTS**

### **Article 45 - Costs of the binding advice proceedings**

The costs of the binding advice proceedings shall be understood to mean the costs mentioned in Articles 46, 47 and 49 and the other costs necessarily incurred in the binding advice proceedings in the opinion of the binding advisor.

### **Article 46 - Administration costs**

1. Upon commencing the binding advice proceedings, the applicant shall owe the NAI administration costs in accordance

## **NAI BINDING ADVICE RULES**

with the provisions of paragraph 2. The administrator shall notify the applicant of this amount as soon as possible after receipt of the request for binding advice.

2. The administration costs shall be calculated on the basis of the total monetary interest of the claims, using the scale determined by the Executive Board as included in Appendix A to these Rules. The Executive Board may make interim changes to this scale in accordance with the provisions of Article 54. In the event that the administration costs cannot be calculated on the basis of the scale, the administrator shall decide.

3. In the event that respondent submits a claim, the respondent shall also be charged administration costs according to the provisions of paragraph 2. The administrator shall notify the respondent of this amount as soon as possible after the claim has been presented.

4. In the event of an increase of claim or if it emerges during the binding advice proceedings that the total monetary interest of the claim(s) of applicant or respondent is higher than assumed by the administrator at the time notice was given as referred to in paragraph 1 or paragraph 3, the applicant and the respondent, respectively, shall owe a supplemental amount of administration costs according to the provisions of paragraph 2.

5. The administrator shall see to the collection of the administration costs owed. If, after a second reminder from the administrator, the administration costs owed by a party are not received by the NAI within fourteen days, this party shall be deemed to have withdrawn its claim.

6. If an applicant withdraws its request for binding advice before the binding advice file is sent to the binding advisor, it shall receive back half of the administration costs it has paid. The same applies if a respondent withdraws its claim before the binding advice file is sent. In other events, the administration costs shall not be reimbursed.

### **Article 47 – Binding advisor fees and disbursements**

1. The fees and disbursements of the binding advisor shall be reasonably determined by the administrator after consulting with the binding advisor.

2. If a binding advisor is released from his mandate before the final binding advice, such binding advisor may claim reasonable compensation, to be determined by the administrator, for fees and disbursements, except in special circumstances at the administrator's discretion.

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3. If the binding advisor's mandate is terminated before the final binding advice, the binding advisor may also claim reasonable compensation, to be determined by the administrator, for fees and disbursements, unless termination is effected pursuant to Article 17(5).

4. In determining the fee, the time that the binding advisor(s) devoted to the binding advice proceedings, the monetary interest of the claim or claims and the complexity of the binding advice proceedings shall be taken into account.

### **Article 48 - Deposit**

1. The administrator shall require a deposit from the applicant from which, insofar as possible, the fees and disbursements of the binding advisor shall be paid. If the respondent has submitted a claim of its own, the administrator may also require a deposit from the respondent for the same.

2. The costs of the secretary, the expert appointed by the binding advisor, technical assistance and an interpreter shall also be paid from the deposit, if and insofar as these costs were incurred by the binding advisor.

3. As soon as possible after the binding advice file has been sent, the binding advisor or the chair shall consult with the administrator regarding the scope of work expected from him, in order to determine the amount of the deposit.

4. The administrator may require the applicant and/or the respondent to increase the deposit until fourteen days after the last hearing at the latest or, in the absence of a hearing, until fourteen days after receipt by the binding advisor of the last permitted statement at the latest.

5. The administrator shall notify the binding advisor of the deposit.

6. The binding advisor shall be authorised to suspend the binding advice proceedings in respect of a claim as long as the relevant party that submitted a claim has not made the deposit required. If the NAI does not receive the deposit required from a party within fourteen days after a second reminder from the administrator, that party shall be deemed to have withdrawn its claim.

7. The NAI shall not be held to pay any costs that are not covered by a deposit. The costs referred to in paragraph 2 shall first be paid from the deposit. No interest shall be paid on the amount of the deposit made.

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### **Article 49 - Costs of legal assistance**

The binding advisor may determine that the unsuccessful party shall pay reasonable compensation for the successful party's legal assistance, if and insofar as these costs were necessary in the binding advisor's opinion.

### **Article 50 - Determination of binding advice costs and allocation**

1. The binding advisor shall determine the costs of the binding advice proceedings with due observance of the provisions of Article 47.

2. The unsuccessful party shall pay the costs of the binding advice proceedings, except in special events at the binding advisor's discretion. If each of the parties is partially unsuccessful, the binding advisor may divide all or part of the costs of the binding advice proceedings.

3. In the cost allocation, the binding advisor shall take account of the deposit made under Article 48. Insofar as the deposit made by a party is used to pay costs that the other party must bear in accordance with the previous paragraph, the latter party shall be ordered to reimburse such amount to the former party.

4. The costs of the binding advice proceedings may also be allocated if a party did not expressly seek such allocation.

5. If the mandate of a binding advisor is terminated before the final binding advice, the compensation for fees and disbursements determined in accordance with Article 47 and the costs referred to in Article 48(2) shall be borne by the parties in proportion to their contribution to the deposit. The administrator may, insofar as necessary in derogation of Article 48(4), require the applicant and/or the respondent to supplement the deposit to the full amount of said compensation and costs.

## **SECTION SEVEN - FINAL PROVISIONS**

### **Article 51 - Timely objection**

A party that participates in the binding advice proceedings shall make objection to the binding advisor without unreasonable delay, sending a copy thereof to the other party and the administrator as soon as it knows or reasonably should know of any act contrary to, or failure to act in accordance with, any provision of these

## **NAI BINDING ADVICE RULES**

Rules, the binding advice agreement or any order, decision or measure of the binding advisor. If a party fails to do so, then the right to rely on this later, in the binding advice proceedings or before the ordinary court, shall be forfeited.

### **Article 52 - Contingencies**

Without prejudice to the provisions of Article 21(1), in all events not provided for in these Rules, action shall be taken in accordance with the spirit of these Rules.

### **Article 53 - Limitation of liability**

The NAI, its board members and personnel, the members of its Advisory & Supervisory Board, the members of the Committee, the binding advisor and any secretary that may have been appointed and any other persons involved in the case by any or all of them shall not be liable either by contract or otherwise for any damage caused by their own or any other person's acts or omissions or caused by the use of any aids in or involving binding advice proceedings, all this unless and insofar as mandatory Dutch law precludes exoneration. The NAI, its board members and personnel shall not be liable for payment of any amount that is not covered by the deposit.

### **Article 54 - Amendment of the Rules**

1. The Executive Board may amend these Rules at any time. The amendments shall have no effect on binding advice proceedings already pending.
2. The Rules shall apply in the form they have at the time at which the binding advice proceedings are commenced.
3. In derogation of paragraph 2, Articles 37(1) and 37(3) shall only apply to binding advice agreements concluded on or after 1 January 2015 in which the parties have referred to binding advice proceedings by or before the NAI or according to the Rules of the NAI, unless the parties have agreed otherwise. With such binding advice agreements concluded before 1 January 2015, Article 45 and, in that connection, Article 1(g) of the Rules applicable until 1 January 2015 shall continue to apply.