

**COLLECTION OF
ARBITRAL AWARDS OF
TEHRAN REGIONAL
ARBITRATION CENTRE**

(2009-2019)

**EDITED BY
OVEIS REZVANIAN**



**COLLECTION OF
ARBITRAL AWARDS OF
TEHRAN REGIONAL
ARBITRATION CENTRE**

(2009-2019)

**EDITED BY
OVEIS REZVANIAN**



Table of Contents

Tehran Regional Arbitration Centre (TRAC)	5
Awards issued in English	7
Award Number 13	9
September 2019	
Assignment of Contract, Interpretation of Contract, Termination of Contract, Scope of Contract, Burden of Proof, Currency of Payment, Applicable Date of Exchange Rate, Closing Rate and the Highest Rate	
Annexes to Award Number 13:	
Dissenting Opinion (Award Number 13)	44
Additional Award (Award Number 13)	64
Award Number 14	71
January 2013	
Jurisdictional Objection, Bifurcation of Jurisdiction, Violation of Due Process, Request for Conservatory Measures, Invalidity of Contract, Frustration of Contract, Completion Date of Contract, Conflict of Laws, Agency, Lack of Specific Authority of the Signatory, Apparent Authority Theory, Consent by Conduct, Transfer of Company Shares	

4 ■ Collection of TRAC Arbitral Awards

Award Number 15
September 2011

139

**Joint Venture, Interpretation of Contract, Characterization of Contract,
Breach of Contract, Misrepresentation, Assignment of Contract, Validity
of Termination of Contract**

Annexes to Award Number 15:

Dissenting Opinion (Award Number 15)

193

Consolidated Analytical Table of Awards issued in English

241

Tehran Regional Arbitration Centre (TRAC)

Tehran Regional Arbitration Centre (TRAC) is an independent international organization under the auspices of the Asian-African Legal Consultative Organization (AALCO). TRAC has been established pursuant to the Agreement signed on 3 May 1997, between the Islamic Republic of Iran and ALLCO. The Agreement came into force in July 2004, after receiving ratification from the Iranian legislative bodies. TRAC effectively commenced its activities a year later, in July 2005, by publishing its Rules of Arbitration.

While TRAC's main duty is to organize arbitration, it is also active in:

- The promotion of international commercial arbitration in the region;
- The coordination of the activities of, and assistance to existing arbitration institutions in the region;
- Assistance to ad-hoc arbitration, especially in cases applying the UNCITRAL Rules;
- Assistance to the enforcement of arbitral awards; and
- Assistance to settlement of disputes.

In March 2018, after thirteen years of experience, TRAC released its new set of Arbitration Rules.

Similar to TRAC's initial Rules (2005), which were based on UNCITRAL Arbitration Rules (1976), the Rules 2018 are essentially based on the new edition of UNITRAL Arbitration Rules (2010) with some modifications to fit institutional arbitration. Moreover, considering the recent trends in international commercial arbitration and the business users' needs, some innovative features are added in the 2018 Rules. In particular, the Rules provide for an expedited procedure (Article 5), as well as the possibility of rendering emergency interim measures (Article 27 and appendix I).

6 ■ Collection of TRAC Arbitral Awards

TRAC Rules permit a vast level of freedom to the parties in order to determine the number of arbitrators, appoint the arbitrator of their choice or define the procedure for their appointment. The parties are also free to agree on different procedural aspects of the arbitration, as well as the substantive law that might be applied by the arbitrators. The Interventions of TRAC are limited a minimum and only to the extent necessary to assist the arbitration to proceed.

In order to enhance the quality of proceedings that will be conducted under the Rules and to assure the highest level of independence and impartiality in the implementation of the Rules, TRAC has international and domestic Arbitration Boards, each consisting of one Chairman, one Vice Chairman, and twelve members at the most to be appointed by the Director, after consultation with the Secretary General of the AALCO. The members of the Arbitration Boards shall be appointed for three years and from among eminent personalities, specialized in the fields of arbitration and trade.

TRAC arbitration is speedy, efficient, cost-effective, neutral and confidential. For these reasons, since its establishment, TRAC's arbitration clause has been continuously inserted in various types of international contracts such as oil and gas services, banking, export credits, telecommunications, construction and industrial plants.

Awards issued in English

Award Number 13

General Details

Date of Award:	30 September 2019
Seat of Arbitration:	Tehran
Applicable Law:	UNIDROIT Principles
Applicable Rules of Arbitration:	Tehran Regional Arbitration Centre (TRAC) Rules of Arbitration (2005)
Arbitration Regime:	International
Parties:	Claimant: Company A (Iran) Respondent: Company B (United Arab Emirates)
Arbitral Tribunal:	Ziya Akıncı (the Chairman), Ali Mohammed Mokarami, Jahanbakhsh Nouraei
Subject Matters:	Assignment of Contract, Interpretation of Contract, Termination of Contract, Scope of Contract, Burden of Proof, Currency of Payment, Applicable Date of Exchange Rate, Closing Rate and the Highest Rate, Dissenting Opinion.

Summary of the Award:

On 18 August 2014, Company B (the “Respondent”) and Company C entered into Collaboration Agreement (the “Contract”) according to which, Company C agreed to invest and participate in the Respondent’s purchase and sales of petroleum products and to share the profits (the “Project”). Subsequently, Company C assigned its rights and obligations under the Contract to Company A (the “Claimant”). According to the Contract, the Claimant was required to provide the Respondent with at least 50% of the capital required for each project, either in USD or AED, within 46-98 hours of the Respondent’s request; the Respondent was required to repay the Claimant’s investment and share the profits within the period of time fixed by the Parties and to fully comply with the Claimant’s instructions as to such repayment. The Respondent made payments in Euros.

A dispute subsequently arose between the Parties basically regarding the currency and the exchange rate in which the Respondent was obligated to pay the investment and profits, prompting the Claimant to file its Request for Arbitration with the TRAC.

This award has been issued under the TRAC Rules of Arbitration and consists of the sections as follows:

- I. ARBITRATION AGREEMENT AND APPLICABLE LAW**
 - A. Arbitration Agreement
 - B. Applicable Law on Merits
 - C. Applicable Procedural Law
 - D. Place of Arbitration
 - E. Language of the Arbitration
- II. JURISDICTION OF THE ARBITRAL TRIBUNAL**
- III. PROCEDURAL HISTORY**
- IV. SUMMARY OF THE DISPUTE**
- V. PARTIES’ POSITIONS**
 - A. Claimant’s Position
 - B. Respondent’s Position
- VI. PARTIES’ PRAYER FOR RELIEF**
 - A. Claimant’s Prayer for Relief
 - B. Respondent’s Prayer for Relief

- VII. ASSESSMENT OF THE FACTS AND LEGAL ANALYSIS**
- A. Was the Respondent required to repay the investment plus profit in USD or AED in accordance with Article 3.2 of the Contract?
 - B. Did the Claimant instruct the Respondent to repay the investment plus profit in a specific currency?
 - C. What is the applicable date of exchange?
 - D. What is the applicable exchange rate?
 - E. Was the Respondent exempt by the Claimant's CEO from paying interest?
 - F. Is the Ammonia Project included within the scope of the Collaboration Agreement?
 - G. Is the Respondent liable to pay AED 17,216,805 (plus additional profit incurred after issuance of the Request for Arbitration)?
 - H. Is the Respondent liable to pay delay damages/interest pursuant to Articles 515, 519 and 522 of the Procedural Law of Iran?
- VIII. ARBITRATION COSTS**
- IX. FINAL AWARD**
-

I. ARBITRATION AGREEMENT AND APPLICABLE LAW

A. Arbitration Agreement

1. The Parties' agreement to arbitrate is provided under Article 15 of the Collaboration Agreement, entitled "Settlement of Dispute and Applicable Law" as follows:

"All differences and disputes arising and/out of/ or in connection to this Agreement, failing to be solved by negotiations within 45 days from its inception. The seat of Arbitration shall be in Tehran. shall be finally settled in accordance with the TRAC Rules of Arbitration.

This Agreement shall be governed by the UNIDROIT Rules and any other substantive laws of relevance.

This Agreement is signed and exchanged in two original copies by the fully authorized representatives of the Parties. The undersigned hereby confirm that they have sufficient mandate and authority to sign this Agreement and be bound by its effect, terms and conditions."

12 ■ Collection of TRAC Arbitral Awards

B. Applicable Law on Merits

2. According to Article 15 of the Collaboration Agreement, "*This Agreement shall be governed by the UNIDROIT Rules and any other substantive laws of relevance.*"
3. Since there are no "rules" published by UNIDROIT, only principles, the Tribunal considers the reference in the Collaboration Agreement to "*UNIDROIT Rules*" to be a reference to the 'UNIDROIT Principles of International Commercial Contracts' (UPICC) in force at the time of the conclusion of the Collaboration Agreement, i.e. the 2010 version of the UPICC (hereinafter the "**UNIDROIT Principles**").

C. Applicable Procedural Law

4. According to Article 15 of the Collaboration Agreement "*The seat of Arbitration shall be in Tehran. shall be finally settled in accordance with the TRAC Rules of Arbitration.*" However, this Article does not clearly state that the TRAC Rules of Arbitration are the applicable procedural law.
5. Since the *lex arbitri* is generally the law of the seat, and the seat of arbitration is Tehran, Iran, the Tribunal considers that the applicable procedural law is Iranian law combined with the relevant TRAC Rules of Arbitration in force at the time of concluding the Collaboration Agreement, which is the 2005 version (hereinafter the "**TRAC Rules**").
6. The applicable procedural rules are therefore listed in order of priority as follows:
 - a) Mandatory Rules of Iranian Procedural Law,
 - b) TRAC Rules of Arbitration of 2005,
 - c) Orders of the Arbitral Tribunal.

D. Place of Arbitration

7. According to Article 15 of the Collaboration Agreement, "*The seat of Arbitration shall be in Tehran.*"

E. Language of the Arbitration

8. The language of the Arbitration is not determined in the Collaboration Agreement. Therefore, in accordance with Article 14.2 of the TRAC

Arbitration Rules, the Arbitral Tribunal, with its Procedural Order No.1 dated 23 June 2017, determined that the language of arbitration shall be English.

II. JURISDICTION OF THE ARBITRAL TRIBUNAL

9. The jurisdiction of the Arbitral Tribunal is derived from Article 15 of the Collaboration Agreement, entitled "Settlement of Dispute and Applicable Law", which provides that all differences and disputes arising out of or in connection with the Collaboration Agreement that cannot be resolved by negotiation within 45 days shall be settled by arbitration.
10. The Parties [have] an arbitration agreement under Article 15 of the Collaboration Agreement:

"All differences and disputes arising and/out of/ or in connection to this Agreement, failing to be solved by negotiations within 45 days from its inception. The seat of Arbitration shall be in Tehran. shall be finally settled in accordance with the TRAC Rules of Arbitration.

11. Neither of the Parties [has] objected to the Arbitral Tribunal's jurisdiction.
12. The Arbitral Tribunal accordingly decided that it has jurisdiction to decide on this dispute.

III. PROCEDURAL HISTORY

13. On 24 January 2017, the Claimant appointed Dr. Ali Mohammad Mokarami as its co-arbitrator.
14. On 25 January 2017, the Respondent appointed Mr. Jahanbakhsh Nouraei as its co-arbitrator.
15. In May 2017, the TRAC appointed Professor Dr[.] Ziya Akıncı as the President of the Tribunal.
16. On 23 May 2017, TRAC Secretariat transferred the file to the President and the co-arbitrators via e-mail.

14 ■ Collection of TRAC Arbitral Awards

17. On 23 June 2017, the Tribunal issued Procedural Order No.1 and decided that the language of the arbitration shall be English and that all submissions and communications must be in English. The Tribunal also decided that the Claimant must submit an English translation of its Request for Arbitration.
18. On 29 June 2017, the Claimant submitted an English translation of the Request for Arbitration.
19. On 29 June 2017, the Arbitral Tribunal contacted with the Parties in order to hold a case management conference on 6 July 2017 in TRAC facilities.
20. On 6 July 2017, the Arbitral Tribunal and the Claimant held a case management conference in Tehran at the TRAC. The Respondent did not attend the case management conference.
21. Procedural Timetable was discussed during the case management conference and finalized.
22. On 6 July 2018, the Tribunal issued Procedural Order No.2 and the Procedural Timetable.
23. On 22 July 2017, pursuant to Article 36.4 of the TRAC Rules, the arbitral proceedings were suspended by the Secretariat's letter due to [the] non-payment of the advance.
24. On 8 August 2017, the Claimant sent its Power of Attorney to the Tribunal and the Respondent with an e-mail [on] which the TRAC Secretariat was cc'ed.
25. On 13 August 2017, in accordance with the Secretariat's letter, the arbitral proceedings were resumed.
26. On 19 August 2017, the Claimant submitted its Statement of Claim with exhibits.
27. On 20 September 2017, by submitting a Power of Attorney to the Secretariat, the Respondent became involved in the arbitral proceedings.
28. On 24 September 2017, TRAC Secretariat informed the Tribunal that the Secretariat had received the Respondent's Power of Attorney in Farsi.

English Award Number 13 ■ 15

29. On 2 October 2017, TRAC Secretariat received an English authorization for the Respondent's attorneys.
30. On 8 November 2017, the Respondent requested an extension of time to submit its Statement of Defence. After receiving the Claimant's comments, the Respondent was granted an extension of time to submit its Statement of Defence until 7 December 2017. The Procedural Timetable was revised accordingly and [was] sent to the Parties.
31. On 6 December 2017, the Respondent submitted its Statement of Defence.
32. On 22 January 2018, the Claimant submitted its Reply to the Statement of Defence (named as "Statement of Defence").
33. On 11 March 2018, the Respondent requested an extension of time to submit its Rejoinder. After providing the Claimant with an opportunity to submit its comments, on 16 March 2018, the Respondent was granted an extension of time until 17 March 2018.
34. On 17 March 2018, the Respondent submitted its Rejoinder (named "Statement of Defence").
35. On 1 May 2018, the Hearing took place in Tehran with the participation of the Tribunal and both Parties.
36. On 3 May 2018, the Minutes of Hearing was sent to the Parties.
37. On 20 May 2018, the Tribunal sent its questions and requests for additional documents to the Parties to be answered in their Post Hearing Briefs.
38. On 31 May 2018, the Parties submitted their Post Hearing Briefs.
39. On 3 July 2018, the Centre extended the time limit for rendering the Final Award until September 14, 2018.
40. On 5 November 2018, the Tribunal requested the Parties to make cost submissions. The Claimant provided its cost submission on 6 November 2019.

16 ■ Collection of TRAC Arbitral Awards

41. On 6 November 2019, the Tribunal held a deliberation meeting.
42. On 9 November 2018, the Tribunal requested the Parties to submit evidence regarding the quantum of the case and the Parties sent their respective arguments and additional evidence on 15 November 2019.
43. On 20 November 2018, the Centre extended the time limit for rendering the Final Award until January 31, 2019.
44. On 7 January 2019, the Claimant requested an additional hearing and to submit further evidence.
45. On 5 February 2019, the Tribunal rejected the Claimant's request for an additional hearing since the Parties had been provided with several opportunities to present their case and submit documents and witnesses. The Tribunal also considered the request for an additional hearing to be made too late[,] as it was already in the process of submitting the draft Final Award to the TRAC Secretariat.
46. On 5 February 2019, the draft Final Award was submitted to the TRAC Secretariat.
47. On 20 February 2019, Dr[.] Mokarami, the co-arbitrator appointed by the Claimant[,] submitted his dissenting opinion to the TRAC Secretariat.
48. On 20 February 2019, the Claimant challenged Mr. Nouraei, the co-arbitrator appointed by the Respondent. On 10 March 2019, the Respondent objected to the challenge.
49. On 23 April 2019, the Centre extended the time limit for rendering the Final Award until July 31, 2019.
50. On 29 April 2019, the TRAC Committee rejected the challenge of Mr Nouraei on the basis that it was inadmissible and unsubstantiated.
51. On 20 May 2019, the draft Final Award was re-submitted to the TRAC Secretariat.
52. The Tribunal closed the proceedings on 18 July 2019.
53. [The] Revised Draft final award [was] sent to TRAC on 10 September 2019.

IV. SUMMARY OF THE DISPUTE

54. The Arbitral Tribunal has prepared this summary on the basis of the Parties' submissions listed above at Section [III].
55. This arbitration arises out of a Collaboration Agreement (hereinafter the "**Contract**")[,] entered into between the Respondent and Company C on 18 August 2014 for a period of twelve months. The Contract was entered into for the purpose of enabling Company C to invest and participate in the Respondent's purchase and sales of petroleum products (hereinafter the "**Projects**") and to share the profits.
56. Company C assigned its rights and obligations under the Contract to the Claimant on 17 May 2015.¹
57. The Claimant's obligations under the Contract are provided at Article 3 as follows:

"Article 3: First Party's Obligations

3.1 The First Party [i.e., the Claimant] hereby agrees to entrust to the Second Party [i.e., the Respondent] the minimum 50% of the capital required for each Project, specifically for the purpose of utilization in the Projects Hereinafter the "Investment".

3.2. First Party hereby agrees to make the investment, required for each project, within 46 to 98 hours as of the Second Parties request for payment to the Second Party's bank account in USD or AED against presenting the invoice. Otherwise, it will be liable for damages specified in each project."

58. The Claimant was therefore required[,] under Article 3 of the Contract[,] to provide the Respondent with at least 50% of the capital required for each Project, in either USD or AED, within 46-98 hours of the Respondent's request.
59. The Respondent's obligation to repay the Claimant's investment and share the profits are provided under Articles 5 and 7 of the Contract as follows;

1. Assignment of Contract No: EM/15/1845 dated 17 May 2015[.]

18 ■ Collection of TRAC Arbitral Awards

Article 5: Investment Payback

The Second Party undertakes to pay back the investment amount, within the time period fixed by the Parties in their subsequent agreements for each project.

Article 7: Investment and Profits Transfer

The Second Party agrees to fully comply with the First Party's instructions as to the repayment of the Investment amount, the profits and any amounts due tdue [sic]

The Second Party may assign the Agreement subject to the prior written consent of the First Party."

60. The Respondent was therefore obligated to (i) repay the Investment within a time fixed by the Parties, and (ii) to fully comply with the Claimant's instructions in respect of the payment of the Investment, profits and any other amounts due.
61. The Respondent made payments to the Claimant in Euros. A dispute subsequently arose between the Parties in relation to currency[,] in which the Respondent was obligated to pay the Investment and profits, prompting the Claimant to file its Request for Arbitration on 29 June 2017.

V. PARTIES' POSITIONS

A. Claimant's Position

62. In its Statement of Claim dated 19 August 2017, the Claimant made the following submissions:
 - a) The Contract was entered into between Company C and the Respondent on 18 August 2014 for a period of twelve months. The Contract was later assigned to the Claimant in accordance with Article 11.3 of the Contract.
 - b) Throughout the execution of the Contract, the Respondent neglected its duty under Article 4.3 of the Contract to convey weekly progress reports of each Project to the Claimant.

- c) The Respondent guaranteed a profit of 12% p/a plus 15% operational profit, and the Respondent agreed to indemnify the Claimant from any operational losses and/or third-party claims.
 - d) In the execution of the Contract, the Claimant has paid a total amount of AED 321,517,830.78 to the Respondent as the Investment.
 - e) As at the date of filing the Request for Arbitration, the amount of the Investment which remained to be repaid plus profit due was AED 17,216,805.
 - f) As the Claimant had a business relationship with the Company H, the Respondent had the option to repay the Investment amount to the Company H, provided that the Respondent provided the Claimant with receipts of payment, in exchange for a brokerage fee of 0.7% from the Claimant.
 - g) The Claimant calculated the repayments made by the Respondent to the Company H by converting the amounts in the receipts of payment, which were paid by the Respondent in Euros, into AED and subtracting those amounts from the total Investment amount. When converting the amounts in the receipts of payment, the Claimant used the closing rate of currency exchange published on the Reuters website on the date of issuance of the receipts.
 - h) Although the amounts paid by the Respondent to the Company H were made in Euros, the currency of the Investment specified in the Contract is USD or AED, and the Respondent is therefore obligated under the Contract to fully comply with the Claimant's instructions as to the repayment of the investment amount, the profit and any amount[s] due.
 - i) The currency conversion should be made on the date of issuance of the receipts since no repayment is made until the receipts are issued.
63. Following the Respondent's filing of its Statement of Defense dated 7 December 2017, the Claimant submitted a further Statement of Claim on 20 January 2018. The arguments made by the Claimant in this Statement of Claim are summarized as follows:

20 ■ Collection of TRAC Arbitral Awards

a) In response to the Respondent's allegation that the Claimant withdrew from the Contract on 6 January 2015,² the Claimant submits that:

i. The Parties' business relationship continued after 6 January 2015 and the Respondent accepted in various letters that the only matter in dispute was the interpretation of the loss resulting from the currency exchange.

ii. The letter from the Claimant's ex-managing director dated 1 December 2015[,] which was submitted by the Respondent[,] shows the existence of the Contract and the mechanisms for calculating the profit and the brokerage. There is no mention in this letter of terminating the Contract or of not calculating profit after 6 January 2015.

iii. The Respondent has not provided any evidence that all of the money was transferred to Company D's accounts on 6 January 2015 which would bring the Contract to an end. In addition, the Respondent never sent 45 days prior written notice of termination as was required under Article 13 of the Contract if it deemed the Contract to be terminated.

iv. The Respondent presented receipts relating to the repayment of the Investment three months after 6 January 2015.

b) In response to the Respondent's allegation that the option of paying the Company H was for Company D and not the Respondent,³ the Claimant submits that:

i. The Respondent is closely connected to a group of companies which includes Company E, Company F, Company D and Company G, and despite being separate legal entities, they all operated as a single entity. A total amount of AED 566,008,918.82 was

2. See paragraph 65 (c)-(e) below.

3. See paragraph 65 (c) below.

paid to the Respondent for both commercial activity and brokerage, however, out of this amount, AED 353,000,000 was remitted to the account of Company D. No money was paid directly to the account of the Respondent, but the Parties accepted that the Respondent was the receiver of the whole amount.

- ii. From the documents submitted it can be seen that goods were either purchased by Company D but were sold by the Respondent, or the inspection was carried out by Company D and the pro forma was issued in the name of the Respondent or Company E. In addition, the invoices issued by the Respondent show the bank accounts of Company D and Company E as remitting accounts, and the Respondent considered the consignment of the 'H Ship', which was purchased and sold by Company D, as goods related to the Contract. It can therefore be concluded that the Respondent consented to the payments being made to the other companies' accounts.
 - iii. The first receipts[,] which were issued by the Company H[,] indicate that the sums paid were in consideration of the Nitrate Ammoniac purchased by Company G for EUR 42,247,361, and the Respondent previously admitted that Nitrate Ammoniac was purchased in the execution of the Contract with capital provided by the Claimant.
 - iv. The Respondent had an incentive to obtain Company H receipts in exchange for a brokerage fee of 0.7% from the Claimant. Therefore, any loss incurred for any reason, including the exchange rate, shall fall on the Respondent.
- c) In response to the Respondent's assertion that it was instructed on 17 January 2015 to pay EUR 53,520,000 to Company D for Company D to then transfer to the Company H,⁴ the Claimant submits that the email dated 17 January 2015 submitted by the

4. See paragraph 65 (g) below.