XIII.3.1 - Arbitral due process

(a) Throughout the proceedings, the parties shall be treated with equality.

(b) Each party shall be given a full opportunity to present his case at all stages of the proceedings ("audiatur et altera pars").

(c) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purpose of taking evidence.

(d) All written pleadings, documents or other communications supplied to the arbitral tribunal by one party shall be communicated to the other party. Likewise, expert reports and other evidentiary documents on which the arbitral tribunal may rely in making its decision are to be communicated to both parties.

(e) The parties are entitled to be legally represented.

Commentary:

1 As a consequence of the genuinely judicial nature of arbitration, Art. 18 UNCITRAL Model Law and all other modern arbitration laws safeguard the parties’ basic procedural right of equal treatment and their right to be heard as the essential principles of arbitral due process. These basic procedural rights constitute the Magna Carta of any arbitration. They compromise some of the very few mandatory rules of arbitration laws which prevail over any agreement of the parties.

2 The parties' due process rights are also essential elements of public policy. Therefore, the violation of these rules by the arbitrators may lead to the setting aside of the award or to the refusal of enforcement. These rules therefore constitute the principal guidelines for the arbitrators' exercise of their procedural discretion over the conduct of the proceedings.