

PCA CASE NO. 2016-37

**IN THE MATTER OF AN ARBITRATION COMMENCED PURSUANT TO
THE ACCORD ON FIRE AND BUILDING SAFETY IN BANGLADESH AND
THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW
ARBITRATION RULES 2010**

between:

INDUSTRIALL GLOBAL UNION AND UNI GLOBAL UNION

The Claimants

- and -

[REDACTED]

The Respondent

TERMS OF APPOINTMENT

17 March 2017

The Tribunal

Mr Donald Francis Donovan (President)
Mr Graham Dunning QC
Professor Hans Petter Graver

Registry

Permanent Court of Arbitration
Tribunal Secretary: Ms Judith Levine

1 The Parties and their Counsel

The Claimants	The Respondent
<p>IndustriALL Global Union Jenny Holdcroft Christina Hajagos-Clausen 54 bis, route des Acacias, Case Postale 1516 1227 Geneva Switzerland Tel.: +41 22 308 5050</p> <p>UNI Global Union Christy Hoffman Alke Boessiger 8-10 Avenue Reverdil CH-1260 Nyon Switzerland Tel.: +41 22 365 2100</p>	<p>[Redacted]</p> <p>Tel.: [Redacted] Fax: [Redacted] E-mail: [Redacted]</p>
Counsel for the Claimants	Counsel for the Respondent
<p>Marney L. Cheek Clovis Trevino Covington & Burling LLP One CityCenter 850 Tenth Street, NW Washington, D.C. 20001 U.S.A. Tel.: +1 202 662 5267 Fax: +1 202 778 5267 E-mail: mcheek@cov.com ctrevino@cov.com</p> <p>Stephanie M. Sarzana Covington & Burling LLP 265 Strand London WC2R 1BH United Kingdom Tel.: +44 20 7067 2351 E-mail: ssarzana@cov.com</p> <p>Albert Marsman De Brauw Blackstone Westbroek N.V. Claude Debussylaan 80 1082 MD Amsterdam The Netherlands Tel.: +31 20 577 1560 Fax: +31 20 577 1775 E-mail: albert.marsman@debrauw.com</p>	<p>[Redacted]</p> <p>Tel.: [Redacted] Fax: [Redacted] E-mail: [Redacted]</p> <p>[Redacted]</p> <p>Tel.: [Redacted] Fax: [Redacted] E-mail: [Redacted]</p>

2 The Dispute and the Commencement of Arbitration

- 2.1 According to IndustriALL Global Union and UNI Global Union (the “**Claimants**”), a dispute has arisen between the Claimants and [REDACTED] (the “**Respondent**”) in relation to the Respondent’s obligations under the Accord on Fire and Building Safety in Bangladesh of 13 May 2013 (the “**Accord**”).
- 2.2 On 11 October 2016, the Claimants submitted a Notice of Arbitration to the Respondent under the United Nations Commission on International Trade Law Arbitration Rules 2010 (the “**UNCITRAL Rules**”) and pursuant to Article 5 of the Accord and Article 9 of the Dispute Resolution Process as agreed by the Accord’s Steering Committee on 10 April 2014 (the “**Dispute Resolution Process**”).
- 2.3 On 10 November 2016, the Respondent submitted its Response to the Claimants’ Notice of Arbitration. The Respondent asserts that the pre-conditions for arbitration under the Accord have not been met; and that the Claimants’ claims are “inadmissible and groundless”. The Respondent requests the Tribunal to “dismiss[] the Claimants’ claims in their entirety” and seeks orders for full costs. Without prejudice to its arguments on inadmissibility of the claims and the effectiveness of the arbitration agreement, the Respondent states that it is prepared to agree to resolution of the current dispute only by “an arbitral tribunal established under the UNCITRAL Arbitration Rules 2010”. Hence, the Parties agree, subject to the Respondent’s admissibility objection, that the Tribunal has jurisdiction over this case.
- 2.4 Pursuant to Article 3(2) of the UNCITRAL Rules, the arbitration proceedings are deemed to have commenced on 11 October 2016, the date on which the Respondent received the Notice of Arbitration.
- 2.5 On 8 July 2016, the Claimants also submitted a Notice of Arbitration to [REDACTED] pursuant to the same provisions of the legal instruments listed in Paragraph 2.2 above. Those proceedings are being administered by the Permanent Court of Arbitration (“**PCA**”) as PCA Case No. 2016-36. In a letter to the PCA dated 5 December 2016, the Claimants, the Respondent, and [REDACTED] recorded their agreement that the two cases (PCA Case No. 2016-36 and PCA Case 2016-37), “while remaining formally distinct, will be heard by the same arbitral tribunal”. The Terms of Appointment and any Award rendered in the respective cases will be formally separate but for reasons of procedural economy, other documents such as correspondence and procedural orders will not be issued separately. Specific modalities of coordination of the two cases will be addressed at the preliminary procedural conference.

3 Legal Representation

- 3.1 The Parties have designated and hereby confirm their respective legal representatives listed in Paragraph 1 above as being authorized to act on their behalf in these arbitration proceedings.
- 3.2 Following the date of these Terms of Appointment, any intended change or addition by a Party to its said legal representatives shall be notified promptly in writing to the other Party, the Tribunal and the PCA. Any such intended change or addition shall only take effect in the arbitration subject to the approval of the Tribunal. The Tribunal may withhold approval where such change or addition could compromise the composition of the Tribunal or the finality of any decision, order or award (on the grounds of possible conflict or other like impediment). In deciding whether to grant or withhold such approval, the Tribunal shall have regard to the circumstances, including: the general principle that a party may be represented by a legal representative chosen by that party; the stage which the arbitration has reached; the efficiency resulting from maintaining the composition of the Tribunal (as constituted throughout the arbitration); and any likely wasted costs or loss of time resulting from such change or addition.

4 The Appointment of the Tribunal

4.1 In their Notice of Arbitration dated 11 October 2016, the Claimants appointed Professor Hans Petter Graver, a Norwegian national, as the first arbitrator pursuant to Article 9(1) of the UNCITRAL Rules.

4.2 Professor Graver's contact details are as follows:

Professor Hans Petter Graver
University of Oslo Faculty of Law
Department of Private Law
P.O. Box 6706 St. Olavs plass
0130 Oslo
Norway
Tel.: +47 9060 6085 (mobile)
E-mail: h.p.graver@jus.uio.no

4.3 In its Response to the Claimants' Notice of Arbitration dated 10 November 2016, the Respondent appointed Mr. Graham Dunning QC, a British national, as the second arbitrator pursuant to Article 9(1) of the UNCITRAL Rules.

4.4 Mr. Dunning's contact details are as follows:

Mr. Graham Dunning QC
Essex Court Chambers
24 Lincoln's Inn Fields
London
WC2A 3EG
United Kingdom
Tel.: +44 (0)20 7813 8000
Fax: +44 (0)20 7813 8080
E-mail: GDunning@essexcourt.net
RNewman@essexcourt.net

4.5 On 5 December 2016, the Parties jointly wrote to the PCA noting that they had "failed to reach an agreement on the appointment of a presiding arbitrator" and requesting that the Secretary-General of the PCA act as appointing authority in accordance with the UNCITRAL Rules.

4.6 On 3 February 2017, the Secretary-General of the PCA appointed Mr. Donald Francis Donovan, a national of the United States of America, as the presiding arbitrator in accordance with the UNCITRAL Rules and the procedures agreed by the Parties.

4.7 Mr. Donovan's contact details are as follows:

Mr. Donald Francis Donovan
Debevoise & Plimpton LLP
919 Third Avenue
New York, New York 10022
United States of America
Tel.: +1 212 909 6233
E-mail: dfdonovan@debevoise.com

- 4.8 The Parties confirm that the members of the Tribunal have been validly appointed in accordance with the UNCITRAL Rules.
- 4.9 The members of the Tribunal are and shall remain impartial and independent of the Parties and have signed statements to such effect.
- 4.10 Each of the members of the Tribunal confirms that he has disclosed to the Parties and co-arbitrators, to the best of his current knowledge, all circumstances likely to give rise to justifiable doubts as to his impartiality or independence and that he will promptly disclose any such circumstances that may arise in the future.
- 4.11 The Parties confirm that they have no objection to the appointment of any member of the Tribunal on the grounds of conflict of interest or lack of independence or impartiality in respect of matters known to them at the date of signature of these Terms of Appointment.

5 Applicable Procedural Rules

- 5.1 The arbitration shall be conducted in accordance with the UNCITRAL Rules. Any amendments to the UNCITRAL Rules made after the date of these Terms of Appointment shall not affect these arbitration proceedings.
- 5.2 The Parties agree that the Secretary-General of the PCA is the appointing authority.
- 5.3 For procedural matters not addressed by these Terms of Appointment, the UNCITRAL Rules (or, if and to the extent applicable, the rules that the Parties have agreed upon), the Tribunal shall conduct the arbitration in such a manner as it considers appropriate.
- 5.4 The Tribunal is empowered to issue procedural decisions, after consulting the Parties, on specific procedural issues if and when needed. These procedural decisions may be signed solely by the presiding arbitrator after consultations with the co-arbitrators. Such signatures may include electronic signatures for decisions sent by e-mail.

6 The Legal Place of Arbitration and Geographical Venue(s) for Hearings

- 6.1 The Parties agree that the legal place (or “seat”) of the arbitration is The Hague, the Netherlands.
- 6.2 In accordance with Article 18(2) of the UNCITRAL Rules, hearings and Tribunal meetings may take place at any venue other than the place of arbitration that the Tribunal determines to be appropriate in consultation with the Parties.

7 The Language of the Arbitration

- 7.1 The Parties agree that the language of the arbitration is English.

8 Case Administration

- 8.1 The Parties agree that the PCA shall act as the registry (“**Registry**”) and administer the arbitral proceedings on the following terms:
- 8.1.1 The Registry shall designate a staff member of the International Bureau to act as Secretary to the Tribunal. For the present arbitration and PCA Case No. 2016-36 the Secretary shall be Ms. Judith Levine.
- 8.1.2 The Registry shall maintain an archive of filings of correspondence and submissions.

- 8.1.3 The Registry shall manage Party deposits to cover the costs of the arbitration, subject to the Tribunal's supervision.
- 8.1.4 If needed, the Registry shall make its hearing and meeting rooms in the Peace Palace in The Hague available to the Parties and the Tribunal at no charge. Costs of catering, court reporting, or other technical support associated with hearings or meetings at the Peace Palace or elsewhere shall be borne by the Parties.
- 8.1.5 Upon request, the Registry shall carry out administrative tasks on behalf of the Tribunal, the primary purpose of which shall be to reduce the overall costs that would otherwise be incurred by the Tribunal itself carrying out such tasks. In accordance with the agreement reached by the PCA and the Parties in correspondence dated 9 December 2016 and 19 December 2016, work carried out by the Registry shall be billed at 50 per cent of the hourly rates set out in the PCA's schedule of fees. The PCA will set an annual cap on its total fees at EUR 20,000 per calendar year (for its work on this case and PCA Case No. 2016-36 combined).
- 8.1.6 PCA fees and expenses shall be paid in the same manner as the Tribunal's fees and expenses.
- 8.2 The contact details of the Registry are as follows:
- Permanent Court of Arbitration
Attn: Ms. Judith Levine
Peace Palace
Carnegieplein 2
2517 KJ The Hague
The Netherlands
Tel.: +31 70 302 4261
Fax: +31 70 302 4167
E-mail: jlevine@pca-cpa.org
gchevalier@pca-cpa.org

9 Procedural Meetings

- 9.1 Subject to consultation with the Parties, procedural meetings may take place in person or by video or telephone conference-call between the Parties and the Tribunal. As regards organizational matters or in case of extreme urgency, the presiding arbitrator (with the consent of the full Tribunal) may conduct a procedural meeting alone with the Parties and may, in exceptional circumstances, take a decision without consulting his co-arbitrators, subject to reporting its content to his two co-arbitrators and the Tribunal confirming any procedural order made by the presiding arbitrator.

10 Communications

- 10.1 The Parties and their representatives shall not engage in any oral or written communications with any member of the Tribunal *ex parte* in connection with the subject-matter of the arbitration.
- 10.2 The Parties shall send all communications for the attention of the Tribunal by e-mail simultaneously to opposing counsel, to each member of the Tribunal, and to the Registry using the respective e-mail addresses set forth in Paragraphs 1, 4.2, 4.4, 4.7, and 8.2 of these Terms of Appointment.

- 10.3 The Parties shall send copies of correspondence between them to the Tribunal and to the PCA only if such correspondence relates to a matter where the Tribunal is required to take action or to abstain from acting or if it gives notice of a relevant event of which the Tribunal and the PCA should be apprised.
- 10.4 Subject to further order, a hard copy (and a flash drive in addition to the hard copy) of all communications exceeding 30 pages (including all attached documents) shall also be sent by courier upon confirmation of receipt within two business days of their transmission by e-mail to the respective addresses set forth in Paragraphs 1, 4.2, 4.4, 4.7, and 8.2 of these Terms of Appointment. Legal authorities shall be submitted in electronic format only, unless the Tribunal specifically requests a hard copy. Further specifics about written submissions and evidence, including scheduling, shall be addressed at a later stage of the proceedings following a preliminary procedural conference.

11 Deposits

- 11.1 In accordance with the UNCITRAL Rules and in order to assure sufficient funds for the Tribunal's fees and expenses, the Parties shall establish an initial deposit equivalent to EUR 150,000 (being EUR 75,000 from each side in this PCA Case No. 2016-37), to be deposited with the PCA as soon as possible and in any event no later than 30 days after receipt of a formal request from the Tribunal, by wire transfer to the following PCA account:

Bank:	ABN Amro Bank N.V. Kneuterdijk 8, 2514 EN, Den Haag
Accounts number:	0480 4373 51
IBAN:	NL56 ABNA 0480 4373 51
BIC:	ABNANL2A
Name of beneficiary:	Permanent Court of Arbitration
Reference:	PCA Case No. 2016-36 (please specify "Claimants" or ██████████)

- 11.2 For reasons of convenience and practicality, the deposit maintained by the PCA will be the same for both PCA Case No. 2016-36 and PCA Case No. 2016-37. An equivalent amount to that requested above will be requested in PCA Case No. 2016-36, thus the initial deposit for both arbitrations combined will total EUR 300,000. The Tribunal will operate initially on the presumption that fees and expenses will be split evenly between the two cases, but the Tribunal shall retain ultimate discretion to vary the allocation of costs amongst the parties in the two disputes as appropriate in the circumstances.
- 11.3 The Registry will review the adequacy of the deposit from time to time in conjunction with the Tribunal and, at the request of the Tribunal, may invite the Parties to make supplementary deposits in accordance with Article 43(2) of the UNCITRAL Rules.
- 11.4 Any transfer fees or other bank charges will be charged by the PCA to the deposit. No interest will accrue on the deposit or be paid to the Parties.
- 11.5 The unused balance held on deposit at the end of the arbitration shall be returned by the PCA to the Parties as directed by the Tribunal.

12 Tribunal Fees and Expenses

- 12.1 Each member of the Tribunal shall be remunerated at the rate of EUR 375 per hour for all time spent in connection with PCA Case No. 2016-36 and PCA Case 2016-37. Time spent on travel for the arbitration, but not working, will be charged at 50% of this rate. For days on which there is a hearing, arbitrators shall be remunerated at EUR 3,750 per day.

- 12.2 Members of the Tribunal shall be reimbursed for all disbursements and charges reasonably incurred in connection with the arbitration, including but not limited to telephone, delivery, printing, storage and other administrative expenses. If any Member of the Tribunal is required to travel for the purposes of fulfilling his obligations as arbitrator, he shall be reimbursed for business class airfares, together with a per diem allowance of EUR 500 to cover travel expenses (including accommodation, meals, taxis and other items associated with such travel).
- 12.3 Members of the Tribunal may bill for reimbursement of disbursements and charges as and when they are incurred, and may submit to the Registry periodic bills in respect of fees.
- 12.4 All payments to the Tribunal shall be made from the deposit administered by the Registry.

13 Immunity from Suit

- 13.1 No arbitrator or member of the Registry shall be liable to any Party howsoever for any act or omission in connection with this arbitration, save (i) where the act or omission is shown by that Party to constitute conscious and deliberate wrongdoing committed by the individual alleged to be liable to that Party and (ii) the extent to which any part of this provision is prohibited by any applicable mandatory law.
- 13.2 No arbitrator or member of the Registry shall be under any legal obligation to make any statement to any person about any matter concerning the arbitration; nor shall any Party seek to make any arbitrator or member of the Registry a party or witness in any legal, administrative or other proceedings arising out of the arbitration.

14 Signature of the Terms of Appointment

- 14.1 These Terms of Appointment may be signed in several counterparts, collectively forming one composite signed document agreed by the Parties and the Tribunal.

[signature page follows]

Signed in London, this 17th day of March 2017



for IndustriALL Global Union


for UNI Global Union




Professor Hans Petter Graver


Mr. Graham Dunning QC


Mr. Donald Francis Donovan
Presiding Arbitrator