

## A Quick Reference Guide

**Key:** **Red:** significant changes | **Amber:** moderately significant changes | **Green:** less significant changes

Rule	June 2014 Arbitration Rules	Key Changes in September 2016 Arbitration Rules	Comments
<p><b>Procedure and Time Limits for Claiming Arbitration - quality and/or condition disputes (Rule 2.1)</b></p>	<p>Rule 2.1 concerned “Disputes as to Quality and/or Condition” and provided very short time limits for claiming arbitration in relation to such disputes, as follows:</p> <p>(a) In respect of disputes arising out of the ‘Rye Terms’ clause, not later than the tenth consecutive day after the completion of final discharge.</p> <p>(b) In respect of claims arising out of certificates of analysis in respect of which allowances are not fixed by the terms of the contract, not later than the twenty-first consecutive day after the date on which the claimant receives the final certificate of analysis.</p> <p>(c) In respect of all other quality and/or condition disputes, not later than the twenty-first consecutive day after the date of completion or final discharge, or delivery, or the unstuffing of the containers, as the case may be.</p>	<p>Rule 2.1 applies only “When Samples are to be Examined by Arbitrators”, and provides time limits for claiming arbitration as follows:</p> <p>(a) The provision concerning disputes arising out of the ‘Rye Terms’ clause is unchanged (but this will now only apply where samples are to be examined by arbitrators).</p> <p>(b) In all other cases, not later than the twenty-first consecutive day after completion of loading or of delivery or of discharge or of unstuffing of the container, as the case may be.</p> <p>In cases where samples are not to be examined by the arbitrators, the time limits for “Other Disputes” in Rule 2.2 apply.</p>	<p>The very short time limits, which have previously been problematic and sometimes prohibitive for parties seeking to make quality and/or condition claims, will now apply in much more limited circumstances. The ambit of new Rule 2.1 is likely to be very narrow, and so the longer time limits under Rule 2.2 will apply in almost all cases.</p> <p>This is the most important difference between the June 2014 and September 2016 Arbitration Rules.</p>

Rule	June 2014 Arbitration Rules	Key Changes in September 2016 Arbitration Rules	Comments
<b>Procedure and Time Limits for Claiming Arbitration - disputes concerning non-payment of amounts payable (previously Rule 2.2(d), now Rule 2.3)</b>	<p>Rule 2.2(d) provided that, irrespective of the time limits in Rules 2.2(a)-(c), in the event of non-payment of amounts payable, arbitration must be claimed not later than 60 consecutive days from the notice that a dispute has arisen as provided for in the Payment Clause of the contract.</p>	<p>Rule 2.3 provides that, irrespective of the time limits in Rules 2.2(a)-(c), in the event of non-payment of amounts payable, either party may notify the other that a dispute has arisen and, within 60 consecutive days from the date of that notice, appoint an arbitrator or apply to Gafta for an appointment of an arbitrator.</p>	<p>Previously, there was a question as to whether payment of amounts other than the price constituted “amounts payable” under this Rule, given the express reference to the Payment Clause (which only relates to the price). The removal of this reference makes it clear that it is not confined to claims for the price, but leaves open a possible debate in each case over the question of what other sums stand as “amounts payable” for the purposes of this Rule.</p>
<b>Arbitration Procedure – payment of the deposit (Rule 4.1)</b>	<p>Rule 4.1 provided that the claimant should deposit with Gafta such sum as Gafta considers appropriate on account of the costs, fees and expenses of the arbitration. No sanction for failure to pay the deposit was imposed in this Rule.</p>	<p>Rule 4.1 provides that, if the deposit is not received by Gafta by 12 noon on the 60<sup>th</sup> consecutive day of the date on which it was called for, the arbitration shall be deemed to be waived and barred. Time limits as per Rule 2 to apply.</p>	<p>This is a potentially severe penalty designed to stop parties from commencing arbitration proceedings and then failing to pay the required deposit.</p> <p>We note that the old Rule 21 (now Rule 23) has been revised to make it clear that the tribunal's discretion to allow claims even after time limits have been missed extends to the revised Rule 4.1.</p> <p>The most logical interpretation of the words “Time limits as per Rule 2 to apply” is that a claimant who has failed to pay the deposit on time: (a) can simply recommence the arbitration if the Rule 2 time limits have not yet passed; but (b) must apply for the tribunal's discretion under Rule 23 if the Rule 2 time limits have already passed.</p>

Rule	June 2014 Arbitration Rules	Key Changes in September 2016 Arbitration Rules	Comments
<b>Arbitration Procedure – service of submissions and evidence (Rule 4.4)</b>	<p>Rule 4.4 provided that failure to send all required sets of documents to Gafta will render the party responsible liable for the costs of copying such documents for forwarding to the arbitrators.</p> <p>Rule 4.4 did not require English translations to be provided where originals were not in English.</p>	<p>The provision that a party failing to send all required sets of documents to Gafta shall be liable for copying charges has been deleted.</p> <p>Rule 4.4 provides that all submissions and evidence are to be in English or with English translations.</p>	<p>The added requirement for English translations of documents brings Gafta into line with the English Court and the requirements of some other international arbitral bodies. However, it has always been the practical position that any party to Gafta arbitration who seeks to prove a point with a document will need to provide a translation of that document. Parties should consider using certified translations, particularly where a possibility exists that a translation might be disputed.</p>
<b>Arbitration Procedure –attendance at oral hearings (Rule 4.8)</b>	<p>Rule 4.8 did not concern the form in which the parties and the tribunal attend an oral hearing (except insofar as it concerned the parties' representatives at the hearing).</p>	<p>Rule 4.8 provides that the form in which the parties can attend an oral hearing is at the tribunal's discretion, but that the tribunal's members must attend an oral hearing.</p>	<p>This Rule now allows for attendance of the parties by video conference or other means, where permitted by the tribunal, adding welcome flexibility and allowing a potential reduction in costs.</p>
<b>Samples – submission to Gafta (Rule 5.1)</b>	<p>Rule 5.1 did not impose a time limit on the despatching of samples to Gafta.</p>	<p>Rule 5.1 provides that samples must be drawn, sealed and despatched to Gafta no later than 21 consecutive days after the date of completion of discharge or the unstuffing of the container or the date the sample was taken, as the case may be.</p>	<p>This Rule now correlates with the new Rule 2.1 by imposing the same 21-day time limit for commencing arbitration where samples are to be examined by the arbitrators.</p> <p>It is important to note that, in most cases, sample analysis results might not be available within the time limit for commencing arbitration that is set out in the revised Rule 2.1. A party contemplating a claim in reliance on sample results should therefore consider starting arbitration without delay, and possibly in advance of obtaining the analysis results, to protect time.</p>

Rule	June 2014 Arbitration Rules	Key Changes in September 2016 Arbitration Rules	Comments
<b>Samples – date of examination by the tribunal (Rule 5.2)</b>	Rule 5.2 provided that in the case of claims arising out of the ‘rye terms’ clause, the samples shall be examined not later than 21 consecutive days after the date of completion of final discharge of the ship at port of destination.	This provision has now been deleted, although the requirement for the tribunal to examine samples “as soon as possible after receipt” remains.	
<b>Samples – place of examination by the tribunal (Rule 5.3)</b>	Rule 5.3 provided that, upon the joint application of the parties, Gafta may arrange for the examination of the “contract goods” to take place at the port of destination by a sole arbitrator or (in the case of a dispute arising out of the ‘rye terms’ clause) three arbitrators, such arbitrator(s) to be appointed by Gafta.	Rule 5.3 provides that the examination of “samples” may take place at a relevant place agreed by the parties, by a tribunal to be appointed by Gafta. The rule also clarifies that costs of such examination are for the parties.	This Rule no longer provides for examination of the “contract goods” and instead envisages examination of samples only. The parties now have freedom to decide upon the location for the examination of samples.
<b>String Arbitrations – types of disputes which may be held as between the first seller and the last buyer (Rule 7.1)</b>	Rule 7.1 provided that, if a contract forms part of a string of contracts with materially identical terms (aside from price), a dispute as to quality or condition may be held as a single arbitration between the first seller and the last buyer in the string, as if they had a contract with each other.	Rule 7.1 provides that, where all parties in the string agree in writing, any dispute (i.e., not just those as to quality or condition) involving a string of contracts with materially identical terms may be held as a single arbitration between the first seller and the last buyer in the string, as if they had a contract with each other.	This is a helpful and commercially reasonable amendment, particularly for parties in the middle of a string of contracts that wish to avoid being involved in arbitration proceedings.

Rule	June 2014 Arbitration Rules	Key Changes in September 2016 Arbitration Rules	Comments
<b>String Arbitrations – concurrent or consolidated procedure and hearings in other cases (Rule 7.2)</b>	Rule 7.2 provided that in all other cases, if all parties concerned expressly agree, the tribunal may conduct proceedings concurrently and hold concurrent hearings, but separate awards shall be made pursuant to each contract.	Rule 7.2 provides that, in the absence of agreement from all parties involved, the tribunal has the right to conduct arbitral proceedings concurrently and hold concurrent or consolidated hearings, but separate awards shall be made pursuant to each contract.	This gives the tribunal wide powers to conduct concurrent proceedings and hold concurrent / consolidated hearings even in the absence of agreement by all relevant parties. This may be helpful where a concurrent / consolidated procedure is a sensible option but, for any reason, one or more of the parties are unwilling to agree to it. However, separate awards will still be made pursuant to each contract.
<b>Awards of Arbitration – payment of the tribunal/Gafta’s fees and expenses (Rule 9.3)</b>	Rule 9.3 provided that, upon receipt of the signed award, Gafta shall give notice to the parties that the award is at their disposal upon payment of the tribunal and Gafta’s fees and expenses. If payment is not received by Gafta within 14 days from such notice, Gafta may call upon any one or more of the parties to take up the award and pay the fees and expenses as directed.	Rule 9.3 provides that Gafta shall first call upon the claimant to pay any outstanding balance of fees and expenses. If the claimant does not pay within 21 days of such notice, Gafta may call upon the respondent to take up the award.	This clarifies the process for seeking payment for awards (and follows the ordinary course, as it is usually the claimant that pays for the award in the first instance).
<b>Right of Appeal – payment of appeal deposit (Rule 10.1(a)(iii))</b>	Rule 10.1(a)(iii) provided that the appellant must have made payment to Gafta of the appeal deposit by the stated deadline.	Rule 10.1(a)(iii) provides that the appellant must ensure that Gafta has received cleared funds of the appeal deposit by the stated deadline.	This imposes a more onerous requirement on the appellant to check with Gafta that payment has been received by the deadline, or risk losing its right to appeal.

Rule	June 2014 Arbitration Rules	Key Changes in September 2016 Arbitration Rules	Comments
<b>Right of Appeal – payment of further sums (Rule 10.1(c))</b>	<p>Rule 10.1(c) provided that, if payment of further required sums is not received by Gafta from either party before the hearing, the board of appeal may decide to stay the proceedings until such payment is made or withhold the publication of the award.</p>	<p>Rule 10.1(c) provides that if payment of such sums is not received before the hearing, the board of appeal may either stay the proceedings or, if the further sums are not received within 60 days of the date on which they were called for, the appeal may be deemed lapsed.</p>	<p>It should be noted that the new wording in Rule 10.1(c) is different from the wording of other “lapse” Rules - Rule 10.1(c) provides that the claim “may” be deemed lapsed, whereas the wording in Rules 4.1 and 4.10 is “shall”. However, there is a risk that lapse under Rule 10.1(c) occurs automatically.</p> <p>If the lapse pursuant to this Rule is automatic, it should further be noted that it seems that the board of appeal does not have discretion to then allow a claim which has so lapsed, since the provision that would afford the board that discretion - Rule 23(b) - refers expressly to Rules 10.1(a) and 10.1(b), but not 10.1(c).</p> <p>In any event, this is a potentially severe penalty designed to stop parties from commencing appeal processes and then failing to pay the required fees.</p>
<b>Appeal Procedure – attendance of parties (Rule 12.1)</b>	<p>Rule 12.1 did not concern the form in which the parties and the board of appeal attend an oral hearing.</p>	<p>Rule 12.1 provides that the form in which the parties can attend an oral hearing is at the board of appeal’s discretion, and that all the board of appeal members must attend an oral hearing.</p>	<p>This Rule now permits attendance of the parties by video conference or other means where permitted by the board of appeal, adding welcome flexibility and allowing a potential reduction in costs.</p>

Rule	June 2014 Arbitration Rules	Key Changes in September 2016 Arbitration Rules	Comments
<b>Appeal Procedure – sending copies of documents to Gafta (Rule 12.3)</b>	Rule 12.3 provided that failure to send the required number of copies of submissions and documentary evidence to Gafta will render the party responsible liable to Gafta for the costs of copying such documents for forwarding to the board of appeal.	This provision has now been deleted.	
<b>Appeal Procedure – concurrent or consolidated procedure and hearings (new Rule 12.4)</b>	There was no provision for concurrent or consolidated proceedings or hearings at appeal.	The new Rule 12.4 gives the board of appeal the right to decide to conduct appeal proceedings concurrently with other appeal proceedings. In particular, concurrent or consolidated hearings may be held, but separate awards shall be made unless all the parties involved agree otherwise in writing.	This gives the board of appeal wide powers to hold concurrent proceedings and concurrent / consolidated hearings even in the absence of agreement between all relevant parties. This may be helpful where a concurrent / consolidated procedure is a sensible option but, for any reason, one or more of the parties are unwilling to agree to it. However, unless all parties agree otherwise, separate awards will still be made pursuant to each contract.
<b>Appeal Awards – payment of the board of appeal/Gafta’s fees and expenses (previously Rule 15, now Rule 15.1)</b>	Rule 15 provided that Gafta may call upon either of the parties to take up the appeal award and pay the fees and expenses of the board of appeal and/or Gafta.	Rule 15.1 provides that, upon receipt of the signed appeal award, Gafta shall give notice to the parties that the appeal award is at their disposal upon payment of the board of appeal’s and Gafta’s fees and expenses. Gafta shall first call upon the appellant to pay any outstanding balance of fees and expenses. If the appellant does not pay within 21 days of such notice, Gafta may call upon the respondent to take up the appeal award.	This clarifies the process for seeking payment for appeal awards (and follows the ordinary course, as it is usually the appellant that pays for the appeal award fees and expenses in the first instance).

Rule	June 2014 Arbitration Rules	Key Changes in September 2016 Arbitration Rules	Comments
<b>Cancellation Costs (new Rule 16)</b>	<p>There was no provision in the Arbitration Rules dealing with cancellation costs.</p>	<p>The new Rule 16 provides that, in the event of either party cancelling or postponing a hearing, the tribunal or the board of appeal (as the case may be) shall be entitled, at their discretion, to charge a cancellation fee and expenses. The fee shall be based on the Gafta notional daily sitting rate, as it may vary from time to time, multiplied by the number of days which have been vacated.</p> <p>The fee shall be calculated on a sliding scale, as follows:</p> <p>(a) if the cancellation or postponement occurs between six and two weeks before the date of the hearing, 50 per cent of the Gafta notional daily sitting rate; and</p> <p>(b) if the cancellation or postponement occurs within two weeks of the date of the hearing, including during the hearing itself, 75 per cent of the Gafta notional daily sitting rate.</p>	<p>This is a potentially onerous requirement that will be particularly relevant if a dispute settles shortly before a hearing, and it may therefore affect when and how parties consider settlement. However, the Rule is designed to compensate the tribunal/ board of appeal for any time spent working on the case, and the fact that the members of the tribunal or board of appeal will have reserved time in their diaries for the hearing that may not be filled following a late cancellation.</p>
<b>Retention of Documents (new Rule 22)</b>	<p>There was no provision in the Arbitration Rules dealing with the retention of documents.</p>	<p>The new Rule 22 provides that all case documents, except submissions, will be kept by Gafta for a period of six months from the date the award is issued unless a longer period is requested by either party in writing.</p>	<p>This Rule clarifies the extent to which case documents are retained by Gafta.</p>

Rule	June 2014 Arbitration Rules	Key Changes in September 2016 Arbitration Rules	Comments
<b>Non-Compliance with Time Limits and Rules (previously Rule 21, now Rule 23)</b>	The old Rule 21 was phrased as applying to “any time limit(s)”, but did not include any express reference to Rule 4.1.	The new Rule 23 now expressly provides that “If the provision of [Rule] 4.1 has not been complied with, then the case shall be deemed to be waived and absolutely barred subject to the discretion of the Tribunal.”	As already explained above, the addition of a reference to Rule 4.1 clarifies that the parties can apply to the tribunal for a discretionary extension of time if they fail to comply with the new time limit for payment of the deposit.