



RULES OF PROCEDURE FOR ARBITRATION

Model Arbitration Clause

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, between the parties shall be settled by arbitration in accordance with the SAARC Arbitration Rules as at present in force, and the award made in pursuance thereof shall be binding on the parties.

Consider adding to model clause:

- a) The appointing authority shall be _____ [institution/person]
- b) The number of arbitrators shall be _____ [one/three]
- c) The place of arbitration shall be _____ [city/country]
- d) The language to be used in arbitral proceeding shall be _____ [language]

Definitions:

In the SAARC Arbitration Rules:-

- a. "Words importing the singular number include, where the text admits or requires, the plural number or vice versa";
- b. "Rules" mean the Rules of arbitration of SAARC Arbitration Council.
- c. "Conciliation Rules" mean the rules of conciliation of SAARC Arbitration Council.
- d. "Day(s)" means calendar days;
- e. "Applicable Law" means the law governing the subject and merits of the dispute
- f. "SARCO" means SAARC Arbitration Council as a legal person/entity having locus standi to sue and/or be sued;
- g. "DG SARCO" means Director General of SAARC Arbitration Council being its Chief Executive Officer;
- h. "Arbitration Agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of the defined legal relationship. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement;
- i. "Governing Board" means the Governing Board of SAARC Arbitration Council;
- j. "Council" means the SAARC Arbitration Council ;
- k. "Arbitral Award" includes an interim award.
- l. "Arbitral Tribunal" means an arbitrator or arbitrators appointed for determining a particular dispute or difference;

- m. "Arbitration" means an arbitration relating to disputes arising out of legal relationships considered to be referred to SAARC Arbitration Council for settlement and where at least one of the parties is a national of the member states of SAARC.
- n. "Party" means a party to the arbitration agreement. It shall include any individual, firm, company, Government, Government organization or Government undertaking.
- o. "Third Party" includes one or more third parties, who is neither claimant nor respondent to the pending arbitration, and whose joinder to this arbitration has been requested".

SECTION I INTRODUCTORY RULES

Article 1 SCOPE OF APPLICATION

1. Where the parties to a contract have agreed in writing that disputes in relation to that contract shall be referred to arbitration under the SAARC Arbitration Rules, then such disputes shall be settled in accordance with these Rules subject to such industry specific modification as the parties and SARCO may agree in writing.

2. These Rules shall govern the arbitration except that where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

Article 2 NOTICES, CALCULATION OF PERIODS OF TIME

1. For the purposes of these Rules, any notice, including a notification, communication, proposal or award, may be transmitted by any means of communication that provides or allows for a record of its transmission.

2. If an address has been designated by a party specifically for this purpose or authorized by the arbitral tribunal, any notice shall be delivered to that party at that address, and if so delivered shall be deemed to have been received. Delivery by electronic means such as email or facsimile may only be made to an address so designated or authorized.

3. In the absence of such designation or authorization, a notice is:

a) Received if it is physically delivered to the addressee;

OR

b) Deemed to have been received if it is delivered at the place of business, habitual residence or mailing address of the addressee.

4. If, after reasonable efforts, delivery cannot be effected in accordance with paragraphs 2 and 3, a notice is deemed to have been received if it has been sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or any other means that provides a record of delivery or attempted delivery.

5. A notice shall be deemed to have been received on the day it is delivered in accordance with paragraphs 2, 3 or 4, or attempted to be delivered in accordance with paragraph 4. A notice transmitted by electronic means is deemed to have been received on the day it is sent, except that a notice of arbitration so transmitted is only deemed to have been received on the day when it reaches the addressee's electronic address.

6. For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received or as per the preceding paragraphs of this Article. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

Article 3 NOTICE OF ARBITRATION

1. The party initiating recourse to arbitration (hereinafter called the "claimant") shall give to the other party (hereinafter called the "respondent") a notice of arbitration, a copy of which shall be sent to the SARCO.

2. The language of notice or any communication made before the constitution of the tribunal shall be in English.

3. Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the respondent in accordance with Article 2.

4. The notice of arbitration shall include the following:

- (a) A demand that the dispute be referred to arbitration;
- (b) The names and addresses of the parties;
- (c) A reference to the arbitration clause or the separate arbitration agreement that is invoked;
- (d) A reference to the contract out of or in relation to which the dispute arises;
- (e) The general nature of the claim and an indication of the amount involved, if any;
- (f) The relief or remedy sought;
- (g) A proposal as to the number of arbitrators (i.e. one or three), if the parties have not previously agreed thereon.

5. The notice of arbitration may also include:

- (a) The proposals for the appointments of a sole arbitrator (Article 8) and an appointing authority referred to in Article 6;

- (b) The notification of the appointment of an arbitrator referred to in Article 8;
- (c) The statement of claim referred to in Article 22.

6. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the sufficiency of the notice of arbitration, which shall be finally resolved by the arbitral tribunal

Article 4

1. Within 30 days of the receipt of the notice of arbitration, the respondent shall communicate to the claimant and DG SARCO a response to the notice of arbitration, which shall include:

- (a) The name and contact details of each respondent;
- (b) A response to the information set forth in the notice of arbitration, pursuant to article 3, paragraph 4 (a) to (g).

2. The response to the notice of arbitration may also include:

- (a) Any plea that an arbitral tribunal to be constituted under these rules lacks jurisdiction;
- (b) A proposal for the designation of an appointing authority referred to in Article 6;
- (c) A proposal for the appointment of a sole arbitrator referred to in Article 8, paragraph 1;
- (d) Notification of an appointment of an arbitrator referred to in Article 7,8 or9 ;
- (e) A brief description of counterclaims or claims for the purpose of set-off, if any, including where relevant, an indication of the amounts involved, and the relief or remedy sought;
- (f) A notice of arbitration in accordance with Article 3 in case the respondent formulates a claim against a party to the arbitration agreement other than the claimant.

3. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the respondent's failure to communicate a response to the notice of arbitration, or an incomplete or late response to the notice of arbitration, which shall be finally resolved by the arbitral tribunal.

Article 5 REPRESENTATION & ASSISTANCE

Each party may be represented and or assisted by persons chosen by it. The names and addresses of such persons shall be communicated to all parties, the arbitral tribunal and the Director General SARCO. Such communication must specify whether the appointment is

being made for the purpose of arbitration and or assistance. Where a person is to act as a representative of a party, the tribunal, on its own initiative or at the request of any party, during the course of arbitration requires proof of authority granted to the representative in such a form as the arbitral tribunal may determine.

Article 6 APPOINTING AUTHORITY

1. If no Appoint Authority has been agreed upon by the parties, either party shall propose to the other the name or names of one or more institutions or persons, one of whom would serve as the appointing authority, prior to proposing or appointing any arbitrator.

2. If all parties have not agreed on the choice of an appointing authority within 14 days after a proposal made in accordance with paragraph 1 has been received by all other parties, any party may request the Director General of SARCO to designate the appointing authority or act as the appointing authority.

3. Where these rules provide for a period of time within which a party must refer matter to an appointing authority and no appointing authority has been agreed on or designated, the period is suspended from the date on which a party initiates the procedure for agreeing on or designating an appointing authority until the date of such agreement or designation.

4. Except referred to in Article 8, paragraph 2, if appointing authority refuses to act or if it fails to appoint an arbitrator within 14 days after it receives a party's request to do so, fails to act within any other period provided by these rules, fails to decide on a challenging to an arbitrator within a reasonable time after receiving a party's request to do so, any party may request to the Director General of the SARCO to designate a substitute appointing authority or to act as an appointing authority.

5. In exercising the functions under these rules, the appointing authority and Director General of SARCO may require from any party and the arbitrators the information they deem necessary and they shall give the parties and, where appropriate, the arbitrators, an opportunity to present their views in any manner they consider appropriate. All such communications to and from the appointing authority and Director General of SARCO shall also be provided by the sender to all other parties.

6. When the appointing authority is requested to appoint an arbitrator pursuant to Articles 8,9 or 11, the party making the request shall send to the appointing authority and the DG SARCO copies of the notice of arbitration and, if it exists, any response to the notice of arbitration.

SECTION II COMPOSITION OF THE ARBITRAL TRIBUNAL

Article 7 NUMBER OF ARBITRATORS

1. If the parties have not previously agreed on the number of Arbitrators (i.e. one or three), and if within thirty days after the receipt by the respondent of the notice of arbitration

the parties have not agreed that there shall be only one Arbitrator, three Arbitrators shall be appointed.

2. Notwithstanding paragraph 1, if no other party has responded to a party's proposal to appoint a sole arbitrator within the time limit provided for in paragraph 1 or the party concerned has failed to nominate a second arbitrator in accordance with Articles 9 Para 1, the appointing authority may, at the request of the party, appoint a sole arbitrator pursuant to the procedure provided for in Article 8, if it determines that, in view of the circumstances of the case, this is more appropriate.

Article 8 APPOINTMENTS OF ARBITRATORS

1. If a sole Arbitrator is to be appointed, either party may propose to the other the names of one or more persons, one of whom would serve as the sole Arbitrator.

2. If within thirty days after receipt by a party of a proposal made in accordance with paragraph 1 the parties have not reached agreement on the choice of a sole Arbitrator, the sole Arbitrator shall be appointed by the appointing authority within 15 days of the receipt of a request there of.

3. In making the appointment, the appointing authority shall use the following list-procedure, unless both parties agree that the list-procedure should not be used or unless the appointing authority determines in its discretion that the use of the list-procedure is not appropriate for the case:

- (a) At the request of one of the parties the appointing authority shall communicate to both parties an identical list containing at least three names;
- (b) Within 7 days after the receipt of this list, each party may return the list to the appointing authority after having deleted the name or names to which he objects and numbered the remaining names on the list in the order of its preference;
- (c) After the expiration of the above period of time, the appointing authority shall appoint the sole Arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties;
- (d) If for any reason the appointment cannot be made according to this procedure, the appointing authority may exercise its discretion in appointing the sole Arbitrator.

4. In making the appointment, the appointing authority shall have regard to such considerations as are likely to secure the appointment of an independent and impartial Arbitrator and shall take into account as well the advisability of appointing an Arbitrator of a nationality other than the nationalities of the parties.

Article 9

1. If three Arbitrators are to be appointed, each party shall appoint one Arbitrator. The two Arbitrators thus appointed shall choose the third Arbitrator who will act as the presiding Arbitrator of the tribunal.

2. If within thirty days after the receipt of a party's notification of the appointment of an Arbitrator the other party has not notified the first party of the Arbitrator he has appointed:

(a) The first party may request the appointing authority to appoint the second Arbitrator.

3. If within thirty days after the appointment of the second Arbitrator the two Arbitrators have not agreed on the choice of the presiding Arbitrator, the presiding Arbitrator shall be appointed by an appointing authority in the same way as a sole Arbitrator would be appointed under Article 8.

Article 10

Where the names of one or more persons are proposed for appointment as Arbitrators, their full names, addresses and nationalities shall be indicated, together with a description of their qualifications.

Article 11

1. For the purposes of article 9 paragraph 1, where three arbitrators are to be appointed and there are multiple parties as claimants or as respondents, unless the parties have agreed to another method of appointment of arbitrators, the multiple parties jointly, whether as claimant or as respondent, shall appoint an arbitrator.

2. If the parties have not appointed according to the procedure agreed by the parties, such number of arbitrators shall be appointed by the appointing authority or the appointing authority so designated provided that such number shall not be an even number.

Article 12

A prospective Arbitrator shall disclose to those who approach him in connection with his possible appointment any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An Arbitrator, once appointed or chosen, shall disclose such circumstances that gives rise to justifiable doubt as to impartiality or independence of his/herto the parties unless they have already been informed by him/her of these circumstances.

Article 13 CHALLENGES OF ARBITRATORS

1. Any Arbitrator appointed by the parties may be challenged if circumstances exist that give rise to justifiable doubts as to the Arbitrators impartiality or independence.

2. A party may challenge the Arbitrator appointed by that party only for reasons of which it becomes aware after the appointment has been made.

Article 14

1. A party who intends to challenge an Arbitrator shall send notice of its challenge within fifteen days after the appointment of the challenged Arbitrator has been notified to the challenging party or within fifteen days after the circumstances mentioned in Articles 13 and 14 became known to that party.
2. The challenge shall be notified to the other party, to the Arbitrator who is challenged to the other members of the arbitral tribunal, to the appointing authority and to the DG SARCO. The notification shall be in writing and shall state the reasons for the challenge.
3. When an Arbitrator has been challenged by one party, the other party may agree to the challenge. The Arbitrator may also, after the challenge, withdraw from his office. In neither case does this imply acceptance of the validity of the grounds for the challenge. In both cases the procedure provided in Article 8 or 9 and 11 shall be used in full for the appointment of the substitute Arbitrator, even if during the process of appointing the challenged Arbitrator a party had failed to exercise his right to appoint or to participate in the appointment.
4. If within 15 days from the date of notice of challenge, all parties do not agree to the challenge or the challenged arbitrator does not withdraw the party making the challenge, may elect to pursue it. In that case, within 18 days from the date of notice of challenge, it shall seek a decision on the challenge by the appointing authority.

Article 15

1. If the appointing authority sustains the challenge, a substitute Arbitrator shall be appointed or chosen pursuant to the procedure applicable to the appointment or choice of an Arbitrator as provided in Articles 8 to 11.

Article 16 REPLACEMENTS OF ARBITRATORS

1. In the event of the death or resignation of an Arbitrator during the course of the arbitral proceedings, a substitute Arbitrator shall be appointed or chosen pursuant to the procedure provided for in Articles 8 to 11 that was applicable to the appointment or choice of the Arbitrator being replaced. This procedure shall apply even if during the process of appointing the arbitrator to be replaced; a party had failed to exercise its right to appoint or to participate in the appointment.
2. In the event that an Arbitrator fails to act or in the event of the de jure or de facto impossibility of his performing his functions, the procedure in respect of the challenge and replacement of an Arbitrator as provided in the preceding Articles shall apply.
3. If at the request of a party, the appointing authority determines that, in view of the exceptional circumstances of the case, it would be justified for a party to be deprived of its right to appoint a substitute arbitrator, the appointing authority may, after giving an opportunity to the parties and the remaining arbitrators to express their views:

- (a) appoint the substitute arbitrator; or

(b) after the closure of the hearings, authorize the other arbitrators to proceed with the arbitration and make any decision or award.

Article 17 REPITION OF HEARINGS IN CASE OF REPLACEMENT

If an arbitrator is replaced, the proceedings shall proceed at the stage where the arbitrator who was replaced, ceased to perform his/her functions, unless the arbitral tribunal decides otherwise.

SECTION III ARBITRAL PROCEEDINGS

Article 18 GENERAL PROVISIONS

1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting its case. The arbitral tribunal in exercising its discretion shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute.

2. As soon as practicable after its constitution and after inviting the parties to express their views, the arbitral tribunal shall establish the provisional timetable of the arbitration. The arbitral tribunal may, at any time, after inviting the parties to express their views, extend or abridge any period of time prescribed under these rules or agreed by the parties.

3. If either party so requests at any stage of the proceedings, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.

4. All documents or information or communication supplied to the arbitral tribunal by one party shall at the same time be communicated by that party to the other party and to the DGSARCO.

5. The arbitral tribunal may, at the request of any party, allow one or more third persons to be joined in the arbitration as a party provided such person(s) are a party to the arbitration agreement, unless the arbitral tribunal finds, after giving all parties, including the person or persons to be joined, the opportunity to be heard, that joinder should not be permitted because of prejudice to any of those parties. If the joinder is permitted by the tribunal, the joining third party or parties, shall be deemed to have adopted the proceedings up to the time of the joinder.

Article 19 SEAT OF ARBITRATION

1. Unless the parties have agreed upon the place where the arbitration is to be held, such place shall be determined by the arbitral tribunal, having regard to the circumstances of the arbitration.

2. The arbitral tribunal may determine the locale of the arbitration within the country it considers appropriate. It may hear witnesses and hold meetings for consultation among its members at any place it deems appropriate, having regard to the circumstances of the arbitration.

3. The arbitral tribunal may meet at any place it deems appropriate for the inspection of goods, other property or documents. The parties shall be given sufficient notice to enable them to be present at such inspection.

4. The award made shall be deemed to have been made at the place of arbitration.

Article 20 LANGUAGES

1. The language to be used in the Rules of Procedure shall be English, unless the parties determine to conduct the proceedings in another language or languages.

2. The arbitral tribunal may order that any documents annexed to the statement of claim or statement of defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Article 21 STATEMENT OF CLAIM

1. Unless the statement of claim was contained in the notice of arbitration, the claimant shall communicate his statement of claim in writing to the respondent, to each of the Arbitrators and the DG SARCO within 15 days of the constitution of the arbitral tribunal. A copy of the contract and of the arbitration agreement, if not contained in the contract, shall be annexed thereto.

2. The statement of claim shall include the following particulars:

- (a) The names, contact details and addresses of the parties;
- (b) A statement of the facts supporting the claim;
- (c) The points at issue;
- (d) The relief or remedy sought.

The claimant may annex to his statement of claim all documents he deems relevant or may add a reference to the documents or other evidence he will submit.

Article 22 STATEMENT OF DEFENCE

1. Within a period of time to be determined by the arbitral tribunal, the respondent shall communicate his statement of defence in writing to the claimant and to each of the Arbitrators, along with the DG SARCO.

2. The statement of defence shall reply to the particulars (b), (c) and (d) of the statement of claim (Article 21, para 2) or a counter-claim, or a claim for the purpose of set off. The respondent may annex to his statement the documents on which he relies for his defence or may add a reference to the documents or other evidence he will submit.

3. In its statement of defence, or at a later stage in the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counter-claim arising out of the same contract or rely on a claim arising out of the same contract for the purpose of a set-off, provided the arbitral tribunal has jurisdiction over it.

4. The provisions of Article 21, para 2, shall apply to a counter-claim and a claim relied on for the purpose of a set-off.

Article 23 AMENDMENTS TO THE CLAIM or DEFENCE

1. During the course of the arbitral proceedings either party may amend or supplement its claim or defence including a counter-claim or a claim for the purpose of set-off, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances. However, a claim, counter-claim or a claim for the purpose of set-off, may not be amended in such a manner that the amended claim, counter-claim or claim for the purpose of set-off falls outside the scope of the arbitral tribunal.

2. The sole Arbitrator or the Presiding Arbitrator shall, at the conclusion of the proceedings, furnish to the Director General of the Council, a complete set of records.

Article 24 PLEA AS TO THE JURISDICTION OF THE ARBITRAL TRIBUNAL

1. The arbitral tribunal shall have the power to rule on objections regarding its jurisdiction, including any objections with respect to the existence or validity of the arbitration clause in the contract or of the separate arbitration agreement.

2. The arbitral tribunal shall have the power to determine the existence or the validity of the contract of which an arbitration clause forms a part. For the purposes of Article 24, an arbitration clause which forms part of a contract and which provides for arbitration under these Rules shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

3. A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than in the statement of defence or, with respect to a counter-claim, or a claim for set off, in the reply to the counter-claim.

4. In general, the arbitral tribunal should rule on a plea concerning its jurisdiction as a preliminary question. However, the arbitral tribunal may proceed with the arbitration and rule on such a plea in their final award.

Article 25 FURTHER WRITTEN STATEMENTS

The arbitral tribunal shall decide which further written statements, in addition to the statement of claim and the statement of defence, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.

Article 26 PERIODS OF TIME

The periods of time fixed by the arbitral tribunal for the communication of written statements (including the statement of claim and statement of defence) should not exceed 15 days. However, the arbitral tribunal may extend the time limit if it concludes that an extension is justified.

Article 27 EVIDENCE AND HEARINGS

1. Each party shall have the burden of proving the facts relied on to support its claim or defence.

2. The arbitral tribunal may, if it considers it appropriate, require a party to deliver to the tribunal and to the other party, within such a period of time as the arbitral tribunal shall decide, a summary of the documents and other evidence which that party intends to present in support of the facts in issue set out in its statement of claim or statement of defence.

3. At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the tribunal shall determine.

Article 28

1. In the event of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof.

2. If witnesses are to be heard including experts, at least fifteen days before the hearing, each party shall communicate to the arbitral tribunal and to the other party the names and addresses of the witnesses he intends to present, the subject upon and the languages in which such witnesses will give their testimony.

3. The arbitral tribunal shall make arrangements for the translation of oral statements made at a hearing and for a record of the hearing if either is deemed necessary by the tribunal under the circumstances of the case, or if the parties have agreed thereto and have communicated such agreement to the tribunal at least fifteen days before the hearing.

4. Hearings shall be held in camera unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses including experts during the

testimony of other witnesses, except that a witness, including expert witness, who is party to the arbitration shall not be in principle, asked to retire. The arbitral tribunal is free to determine the manner in which witnesses are examined.

5. Evidence of witnesses may also be presented in the form of written statements signed by them. The arbitral tribunal may direct that witnesses, including experts, be examined through means of telecommunication, (including but not limited to video-conferencing) that do not need their presence at the hearing.

6. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

Article 29 Summary Procedure

If the parties agree, they can request the tribunal to make an award based on the documents submitted by both the parties, without calling for any oral hearing or evidence.

Article 30 INTERIM MEASURES of PROTECTION

1. At the request of either party, the arbitral tribunal may take any interim measures it deems necessary in respect of the subject-matter of the dispute, including measures for the conservation of the goods forming the subject-matter in dispute such as; ordering their deposit with a third person or the sale of perishable goods.

2. Such interim measures may be established in the form of an interim award. The arbitral tribunal shall be entitled to require security for the costs of such measures.

3. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

Article 31 EXPERTS

1. The arbitral tribunal may appoint after consultation with the parties, one or more experts to report to it, in writing, on specific issues to be determined by the tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties, and the DG SARCO.

2. The expert shall in principle before accepting appointment, submit to the arbitral tribunal and to the parties, a description of its qualifications and a statement of impartiality and independence. Within the time ordered by the arbitral tribunal the parties shall inform the arbitral tribunal whether they have any objection to the expert's qualification, independence or impartiality. The arbitral tribunal shall promptly decide whether to accept such objections. After appointment a party may object to the expert's qualification, independence or impartiality, only if the objection is for the reasons of which the party became aware, after the appointment was made. The arbitral tribunal shall decide what, if any, action to take.

3. The parties shall give the expert any relevant information or produce for its inspection any relevant documents or goods that it may require of them. Any dispute between a party

and such an expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.

4. Upon receipt of the experts report, the arbitral tribunal shall communicate a copy of the report to the parties who shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in its report.

5. At the request of either party the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to *question/interrogate the expert. At this hearing either party may present expert witnesses in order to testify on the points at issue. The provisions of Article 24 shall be applicable to such proceedings.

Article 32 DEFAULTS

1. If, within the period of the time fixed by the arbitral tribunal, the claimant has failed to communicate its statement of claim without showing sufficient cause for such failure, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings, unless there are remaining matters, that need to be decided as the arbitral tribunal thinks fit. If, within the period of time fixed by the arbitral tribunal, the respondent has failed to communicate its statement of defence without showing sufficient cause for such failure, the arbitral tribunal shall order that the proceedings continue, without treating such failure in itself as an admission of the claim. These provisions also apply to a claimant's failure to submit a defence to a counter-claim, or to a claim for the purpose of set-off.

2. If any of the parties, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration in absentia of the party having failed to appear for a hearing.

3. If one of the parties, duly invited to produce documentary evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

Article 33 CLOSURES OF HEARINGS

1. The arbitral tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.

2. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own motion or upon application of a party, to reopen the hearings at any time before the award is made.

Article 34 WAIVERS OF RULES

A party who is aware of the fact that any provision, or requirement under, these Rules, or the arbitration agreement has not been complied with and yet proceeds with the arbitration without promptly stating its objection to such non-compliance, shall be deemed to have

waived its right to object, unless such party can show to the tribunal that, under the circumstances, its failure to object was justified.

SECTION IV AWARD DECISIONS

Article 35

1. When there are three or more Arbitrators, any award or other decision of the arbitral tribunal shall be made by a majority of the Arbitrators.
2. In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorizes, the presiding Arbitrator may decide on its own, subject to revision, if any, by the arbitral tribunal.
3. The arbitral tribunal shall render its final award within a period, which is limited to six months. Such period shall start to run from the day when the arbitral tribunal receives the respondent's statement of defence or counter-claim as defined in Article 22, or in the case of default, from the date that the arbitral tribunal orders the continuation of the proceedings under Article 32(1). If in accordance with Article 23, amendments are to be allowed by the arbitral tribunal, the time limit shall commence from the date of the amendments. Such time limit may be extended by the arbitral tribunal with the consent of the parties, or in the absence of consent, in consultation with the Director General of the Council.

Article 36 FORM AND EFFECT OF AWARD

1. In addition to making a final award, the arbitral tribunal shall be entitled to make interim, interlocutory, or partial awards.
2. The award shall be made in writing and shall be final and binding on the parties. The parties undertake to carry out the award without delay.
3. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.
4. An award shall be signed by all the Arbitrators if more than one, and it shall contain the date on which and the place where the award was made. Where there are three or more Arbitrators and one of them fails to sign, the award shall state the reason for the absence of the signature.
5. The award may be made public only with the consent of both parties.
6. The arbitral tribunal shall submit the appropriate number of copies of the award to the DG SARCO, who will send the copies to the parties, within 3 days of the receipt of these copies.
7. If the arbitration law of the country where the award is made requires that the award be filed or registered by the arbitral tribunal, the tribunal shall comply with this requirement within the period of time required by law. The Director General of the Council may, if

requested, render all assistance in the filing or registration of the award when the same is required by the law of the country where the award is made.

8. The arbitral tribunal may make separate awards on different issues, at different times, in respect of all parties to the arbitration.

Article 37 APPLICABLE LAW, AMIABLE COMPOSITEUR

1. The arbitral tribunal shall apply the law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of law rules which it considers applicable.

2. The arbitral tribunal shall decide as *amiable compositeur* or *ex aequo et bono* only if the parties have expressly authorized the arbitral tribunal to do so and if the law applicable to the arbitral procedure permits such arbitration.

3. In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

Article 38 SETTLEMENT or OTHER GROUNDS FOR TERMINATION

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by both parties and accepted by the tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.

2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order if the tribunal is of the view that the objections raised by the party are not justifiable.

3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the Arbitrators, shall be communicated by the arbitral tribunal to the DG SARCO, who will send the copies to the parties, within 3 days of the receipt of these copies. Where an arbitral award on agreed terms is made, the provisions of Article 36, para 2 and 4 to 7, shall apply.

Article 39 INTERPRETATION OF THE AWARD

1. Within fifteen days after the receipt of the award, either party, with notice to the other party and DG SARCO, may request that the arbitral tribunal give an interpretation of the award, or any issue thereof.

2. The interpretation shall be given in writing within fifteen days after the receipt of the request. The interpretation shall form part of the award and the provisions of Article 36, para 2 and 4 to 7, shall apply.

Article 40 CORRECTION OF THE AWARD

1. Within fifteen days after the receipt of the award, either party, with notice to the other party and the DG SARCO, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature, the arbitral tribunal shall within 15 days of such request make such corrections, if it deems necessary.

2. The arbitral tribunal may within fifteen days after the communication of the award make such corrections on its own initiative.

3. Such corrections shall be in writing, and the provisions of Article 36, para 2 to 7, shall apply.

Article 41 ADDITIONAL AWARD

1. Within fifteen days after the receipt of the award, either party, with notice to the other party and the DG SARCO, may request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.

2. If the arbitral tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall complete its award within thirty days after the receipt of the request. However, the arbitral tribunal may extend its period of time, within which it shall make the amendments.

3. If the arbitral tribunal considers the request for an additional award to be justified and considers that the omission can be rectified after further hearings or evidence, the relevant articles of these rules, shall apply.

4. When an additional award is made, the provisions of Article 36, para 2 to 7, shall apply.

Article 42 COSTS

The arbitral tribunal shall fix the costs of arbitration in its award. The term "costs" includes only:

- (a) The fees of the arbitral tribunal to be stated separately as to each Arbitrator and to be fixed by the tribunal itself in accordance with Article 43;
- (b) The reasonable travel and other expenses incurred by the Arbitrators;

- (c) The reasonable costs of expert advice and of other assistance required by the arbitral tribunal;
- (d) The reasonable travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;
- (e) The costs for legal representation and assistance of the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;
- (f) Expenses of the appointing authority (if the case maybe)
- g) The admin fee of the Council as per the annexed schedule.

Article 43

1. The fees of the arbitral tribunal shall be based on the guidelines as given in annexure, having taking into account , the complexity of the subject-matter, the time spent by the Arbitrators and any other relevant circumstances of the case, and shall be guided by the Fee Schedule.

2. In fixing its fees, the arbitral tribunal shall consult with the Director General of the Council. The Director General of the Council may undertake consultations with the parties before giving advice to the arbitral tribunal. The Director General of the Council, within 30 days from the constitution of the arbitral tribunal, in consultation with the Arbitrators and the parties, shall settle the basis of computation of fees and expenses in accordance with the schedule annexed before the Arbitrators take up their duties.

3. For the purpose of calculating the amount in dispute, the value of any counter-claim and/or set-off will be added to the amount of the claim.

4. Where a claim or counter-claim does not state a monetary amount, an appropriate value for the claim or counter-claim shall be settled by the Council in consultation with the Arbitrators and the parties for the purpose of computing the Arbitrators' fees and the Council's administrative charges.

Article 44

1. Except as provided in para 2, the costs of arbitration shall, in principle, be borne by the unsuccessful party. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

2. With respect to the costs of legal representation and assistance referred to in Article 42, para (e), the arbitral tribunal, taking into account the circumstances of the case, shall be free to determine which party shall bear such costs or may apportion such costs between the parties if it determines that apportionment is reasonable.

3. When the arbitral tribunal issues an order for the termination of the arbitral proceedings or makes an award on agreed terms, it shall fix the costs of arbitration referred to in Article 42 and Article 43, para 1, in the text of that order or award.

4. No additional fees may be charged by an arbitral tribunal for interpretation or correction or completion of its award under Articles 39 to 41.

Article 45 DEPOSITS OF COSTS

1. The Director General of the Council before the constitution of the arbitral tribunal shall prepare an estimate of the cost of arbitration and may request each party to deposit an equal amount as an advance for those costs.

2. During the course of the arbitral proceedings, the Director General of the Council may request supplementary deposits from the parties.

3. If the required deposits are not paid in full within thirty days after the receipt of the request, the Director General of the Council shall so inform the parties in order that one or another of them may make the required payment. If such payment is not made, the arbitral tribunal, after consultation with the Director General of the Council, may order the suspension or termination of the arbitral proceedings.

4. The Director General of the Council may apply the deposits towards disbursements for the costs of arbitration.

5. After the award has been made, the Director General of the Council shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

Article 46 CONFIDENTIALITY

The Arbitrator and the parties must keep confidential all matters relating to the arbitration proceedings. Confidentiality also extends to the award, except where its disclosure is necessary for purposes of implementation and enforcement.

Article 47 EXCLUSION OF LIABILITY

Save for intentional wrongdoing, the parties waive, to the fullest extent permitted under the applicable law, any claim against the Council, arbitrators, appointing authority and any person appointed by the arbitral tribunal, based on any act or omission in connection with the arbitration.

Article 48 WAIVER OF DEFAMATION ACTION

1. The parties and the Arbitrators agree that statements or comments, whether written or oral made in the course of the arbitration proceedings, shall not be relied upon to found or maintain any action for defamation, libel, slander or any related complaint.

2. The parties also hereby waive their right to any form of recourse against an award to any court or other competent authority, in so far as such waiver can validly be made under the applicable law.
