

**Additional Protocol to the SAARC Framework Agreement for Energy Cooperation
(Electricity) concerning the Settlement of Disputes**

The States Parties to the present Protocol and to the SAARC Framework Agreement for Energy Cooperation (Electricity), hereinafter referred to as the “Framework Agreement”, adopted by Member States of the South Asian Association for Regional Cooperation in Kathmandu, Nepal on 27 November 2014,

Expressing their wish to settle all disputes between them arising out of the interpretation or implementation of the Framework Agreement by peaceful means,

Have agreed as follows:

Article 1

Obligation to resolve disputes

States Parties shall settle any dispute between them arising out of the interpretation and/or implementation of the Framework Agreement in accordance with Article 16 of the Framework Agreement and the provisions of this Protocol.

Article 2

Amicable resolution of disputes

1. Disputes between States Parties arising out of the interpretation and/or implementation of the Framework Agreement shall, as far as possible, be resolved amicably.

2. If the dispute has not been resolved within a period of six months from the date on which either party to the dispute requested amicable settlement, either party to the dispute may, by written notice to all disputing parties and to the SAARC Arbitration Council, refer the dispute to the SAARC Arbitration Council.

Article 3

Choice of procedure

1. Where a dispute has been referred to the SAARC Arbitration Council in accordance with Article 2(2), the parties to the dispute shall proceed expeditiously to an exchange of views regarding the method of dispute settlement to be administered by the SAARC Arbitration Council.

2. If the parties to the dispute are unable to agree on the method of dispute settlement to be administered by the SAARC Arbitration Council within one month from the date on which the dispute was referred to the SAARC Arbitration Council in accordance with Article 2(2), either party may submit the dispute to arbitration in accordance with this Protocol.

3. Nothing in this Protocol impairs the right of any States Parties to agree at any time to settle a dispute between them arising out of the interpretation and/or implementation of the Framework Agreement by any peaceful means of their own choice.

Article 4

Institution of arbitration proceedings

Subject to the provisions of Article 3, any party to a dispute may submit the dispute to the arbitral procedure provided for in this Protocol by written notice of arbitration communicated to the other party or parties to the dispute and to the SAARC Arbitration Council. The notice of arbitration shall contain a brief statement of the claim and the grounds on which it is based.

Article 5

SAARC Arbitration Council

The SAARC Arbitration Council shall take charge of the archives of the arbitration proceedings. In addition, the SAARC Arbitration Council shall act as a channel of communication between the parties and the arbitral tribunal, provide secretariat services and/or serve as registry for the arbitration proceedings.

Article 6

Representation and assistance

Each State Party to the dispute shall appoint an agent. The parties may also be assisted by persons of their choice. The name and address of the agent shall be communicated in writing to the other party or parties to the dispute, to the SAARC Arbitration Council, and to the arbitral tribunal after it has been constituted.

Article 7

Constitution of the arbitral tribunal

1. Unless the parties to the dispute agree otherwise, the arbitral tribunal shall consist of three members.

2. The party instituting the arbitration proceedings shall appoint one member of the arbitral tribunal, who may be its national. The appointment shall be included in the notice of arbitration referred to in Article 4 of this Protocol.

3. The other party to the dispute shall, within 30 days of receipt of the notice of arbitration referred to in Article 4 of this Protocol, appoint one member of the arbitral tribunal, who may be its national. If the appointment is not made within that period, the party instituting the proceedings may, within 14 days of the expiration of that period, request that the appointment be made in accordance with paragraph 5 of this Article.

4. A third member of the arbitral tribunal, who may not be a national of a State Party to the dispute, shall be appointed by the parties to the dispute as the President of the arbitral tribunal. If, within 60 days of the receipt of the notice of arbitration referred to in Article 4 of this Protocol, the parties are unable to agree on the appointment of a third member of the arbitral tribunal, that appointment shall be made in accordance with paragraph 5 of this Article, at the request of a party to the dispute.

5. Unless the parties to the dispute agree otherwise, appointments made in accordance with this paragraph shall be made by the Director General of the SAARC Arbitration Council. If the Director General is unable to act under this paragraph or is a national of one of the parties to the dispute, the appointment shall be made by the next most senior member of staff of the SAARC Arbitration Council who is available and is not a national of one of the parties. The appointments referred to in this paragraph shall be made within a period of 30 days of the receipt of the request and in consultation with the parties. Subject to paragraph 3 of this Article, the members of the arbitral tribunal so appointed shall be of different nationalities and may not be in the service of, ordinarily resident in the territory of, or nationals of, any of the parties to the dispute.

6. Any vacancy in the arbitral tribunal shall be filled in the manner prescribed for the initial appointment.

7. Parties in the same interest shall appoint one member of the tribunal jointly by agreement.

8. In disputes involving more than two parties, the provisions of paragraph 1 to 6 of this Article shall apply to the maximum extent possible.

Article 8 *Challenge of arbitrators*

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

2. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.

3. A party may challenge the arbitrator appointed by him/her only for reasons of which he/she becomes aware after the appointment has been made.

4. In the event that an arbitrator fails to act or in the event of the *de jure* or *de facto* impossibility of his or her performing his or her functions, the procedure in respect of the challenge of an arbitrator as provided in paragraphs 5 to 9 shall apply.

5. A party that intends to challenge an arbitrator shall send notice of its challenge within 15 days after it has been notified of the appointment of the challenged arbitrator, or within 15 days after the circumstances mentioned in paragraphs 1 to 4 became known to that party.

6. The notice of challenge shall be communicated to all other parties, to the arbitrator who is challenged, to the other arbitrators, and to the SAARC Arbitration Council. The notice of challenge shall state the reasons for the challenge.

7. When an arbitrator has been challenged by a party, all parties may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his or her office. In neither case does this imply acceptance of the validity of the grounds for the challenge.

8. If, within 15 days from the date of the 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 30 days from the date of the notice of challenge, it shall seek a decision on the challenge by the Director General of the SAARC Arbitration Council.

9. In rendering a decision on the challenge, the Director General of the SAARC Arbitration Council may indicate the reasons for the decision, unless the parties agree that no reasons shall be given.

Article 9

Jurisdiction of the arbitral tribunal

1. The arbitral tribunal shall have jurisdiction over any dispute arising out of the interpretation and/or implementation of the Framework Agreement which is submitted to it in accordance with this Protocol.

2. In the event of a dispute as to whether the arbitral tribunal has jurisdiction, the matter shall be settled by decision of the arbitral tribunal.

3. The arbitral tribunal may rule on a plea concerning its jurisdiction as a preliminary question or in its final award.

Article 10

Procedure

Unless the parties to the dispute otherwise agree, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties to the dispute are treated with equality and that at any stage of the proceedings each party is given a full opportunity to be heard and to present its case.

Article 11

Duties of the parties to a dispute

The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, in accordance with their law and using all means at their disposal, shall provide it with all relevant documents, facilities and information, and enable it when necessary to call witnesses or experts and receive their evidence and to visit the localities to which the case relates.

Article 12
Language

1. Unless otherwise agreed between the parties to the dispute, the language to be used in the arbitration proceedings shall be English. This shall apply to the parties' written pleadings and to any oral hearings that may take place.

2. The arbitral tribunal may order that any documents annexed to the parties' written pleadings, 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 English, or into any other language or languages agreed upon by the parties or determined by the arbitral tribunal.

Article 13
Experts appointed by the arbitral tribunal

1. The arbitral tribunal may, at the request of a party or *proprio motu*, select in consultation with the parties one or more independent experts to report to it, in writing, on specific issues to be determined by the arbitral tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.

2. The parties shall give the expert any relevant information or produce for his/her inspection any relevant documents or goods that he/she may request of them. Any dispute between a party and such expert as to the relevance and appropriateness of the required information or production shall be referred to the arbitral tribunal for decision.

3. Upon receipt of the expert's 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 his/her report.

Article 14
Provisional Measures

1. The arbitral tribunal may, at the request of a party, prescribe any provisional measures it considers appropriate.

2. The party requesting provisional measures under paragraph 1 shall satisfy the arbitral tribunal that:

- (a) the arbitral tribunal has *prima facie* jurisdiction;
- (b) harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and
- (c) there is a reasonable possibility that the requesting party will succeed on the merits of the claim.

3. Any determination made by the arbitral tribunal in respect of paragraph 2 shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

4. The arbitral tribunal may modify, suspend, or terminate a provisional measure it has granted, upon the request of a party to the dispute and after the parties have been given an opportunity to be heard.

Article 15
Decisions

1. Decisions of the arbitral tribunal shall be taken by a majority vote of its members. In the event of an equality of votes, the President shall have a casting vote.

2. In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorises, the presiding arbitrator may decide on his/her own, subject to revision, if any, by the arbitral tribunal.

Article 16
Applicable law

1. The arbitral tribunal shall decide the issues in dispute in accordance with the rules and principles of international law.

2. This provision shall not prejudice the power of the arbitral tribunal to decide a case *ex aequo et bono*, if the parties agree thereto.

Article 17
Default of appearance

If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to make its award. Absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings. Before making its award, the arbitral tribunal must satisfy itself not only that it has jurisdiction over the dispute but also that the claim is well founded in fact and law.

Article 18
The arbitral award

1. The arbitral tribunal may make separate awards on different issues at different times.

2. All awards shall be made in writing, and the arbitral tribunal shall state the reasons upon which the award is based.

3. The arbitral award shall contain the names of the members who have participated and the date of the award, and shall be signed by all members of the tribunal. Any member of

the tribunal may attach a separate or dissenting opinion to the award.

Article 19
Finality of the award

The arbitral award shall be final and binding on the parties. The parties shall carry out all awards without delay.

Article 20
Interpretation or implementation of the award

Any controversy which may arise between the parties to the dispute as regards the interpretation or manner of implementation of the award may be submitted by either party for decision to the arbitral tribunal which made the award. For this purpose, any vacancy in the tribunal shall be filled in the manner provided for in the original appointments of the members of the tribunal.

Article 21
Expenses

Unless the arbitral tribunal decides otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares.