



## **RULES OF PROCEDURE FOR CONCILIATION**

### **MODEL CONCILIATION CLAUSE**

Where, in the event of a dispute arising out of or relating to this contract, the parties wish to seek an amicable settlement of that dispute by conciliation, the conciliation shall take place in accordance with the SAARC Conciliation Rules as at present in force.

### **APPLICATION OF THE RULES**

#### **Article 1**

- (1) These Rules apply to conciliation of disputes arising out of or relating to a contractual or other legal relationship where the parties seeking an amicable settlement of their dispute have agreed to conciliate under the auspices of the SAARC Arbitration Council (hereinafter referred to as the “Council”).
- (2) The parties may agree to exclude or vary any of these Rules at any time.
- (3) Where any of these Rules is in conflict with a provision of law from which the parties cannot derogate, that provision prevails.

### **DEFINITIONS:**

#### **ARTICLE 2**

- (1) For the purposes of these Rules, “**conciliator**” means a sole conciliator or two or more conciliators, as the case may be.
- (2) For the purposes of these Rules, “**conciliation**” means a process, whether referred to by the expression conciliation, mediation or an expression of similar import, whereby parties request a third person or persons (“the conciliator”) to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to a contractual or other legal relationship. The conciliator does not have the authority to impose upon the parties a solution to the dispute.

## **INTERPRETATION**

### **ARTICLE 3**

1. In the interpretation of these Rules, regard is to be had to its regional origin and to the need to promote uniformity in its application and the observance of good faith.
2. Questions concerning matters governed by these Rules which are not expressly settled in it are to be settled in conformity with the general principles on which these Rules is based.

## **COMMENCEMENT OF CONCILIATION PROCEEDINGS**

### **Article 4**

- (1) The party initiating conciliation sends to the other party a written invitation to conciliate under these Rules, briefly identifying the subject of the dispute.
- (2) Conciliation proceedings commence when the other party accepts the invitation to conciliate. If the acceptance is made orally, it is advisable that it be confirmed in writing.
- (3) If the other party rejects the invitation, there will be no conciliation proceedings.
- (4) If the party initiating conciliation does not receive a reply within thirty days from the date on which he sends the invitation, or within such other period of time as specified in the invitation, he may elect to treat this as a rejection of the invitation to conciliate. If he so elects, he informs the other party accordingly.

## **NUMBER OF CONCILIATORS**

### **Article 5**

There shall be one conciliator unless the parties agree that there shall be two or three conciliators. Where there is more than one conciliator, they ought, as a general rule, to act jointly.

## **APPOINTMENT OF CONCILIATORS**

### **Article 6**

- (1) (a) In conciliation proceedings with one conciliator, the parties shall endeavour to reach agreement on the name of a sole conciliator;

(b) In conciliation proceedings with two conciliators, each party appoints one conciliator;

(c) In conciliation proceedings with three conciliators, each party appoints one conciliator.

The parties shall endeavour to reach agreement on the name of the third conciliator, unless a different procedure for his/her appointment has been agreed upon.

(2) The Director-General of the Council shall assist in the appointment of the Conciliator(s), if the parties fail to reach an agreement in connection with the appointment of conciliators.

In particular,

(a) A party may request the Director-General of the Council to recommend the names of suitable individuals to act as conciliator; or

(b) The parties may agree that the appointment of one or more conciliators be made directly by the Director-General of the Council.

In recommending or appointing individuals to act as conciliator, the Director-General shall have regard to such considerations as are likely to secure the appointment of an independent and impartial conciliator and, with respect to a sole or third conciliator, shall take into account the advisability of appointing a conciliator of a nationality other than the nationalities of the parties.

(3) When a person is approached in connection with his or her possible appointment as conciliator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence.

A conciliator, from the time of his or her appointment and throughout the conciliation proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him or her.

## **CONDUCT OF CONCILIATION**

### **ARTICLE 7**

1. The parties are free to agree, by reference to a set of these Rules or otherwise, on the manner in which the conciliation is to be conducted.

2. Failing agreement on the manner in which the conciliation is to be conducted, the conciliator may conduct the conciliation proceedings in such a manner as the conciliator considers appropriate.

3. The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons therefor.

## **SUBMISSION OF STATEMENTS TO CONCILIATOR**

### **Article 8**

(1) The conciliator, upon his appointment, requests each party to submit to him a brief written statement describing the general nature of the dispute and the points at issue. Each party sends a copy of his statement to the other party.

(2) The conciliator may request each party to submit to him a further written statement of his position and the facts and grounds in support thereof, supplemented by any documents and other evidence that such party deems appropriate. The party sends a copy of his statement to the other party.

(3) At any stage of the conciliation proceedings the conciliator may request a party to submit to him such additional information as he deems appropriate.

## **REPRESENTATION AND ASSISTANCE**

### **Article 9**

The parties may be represented or assisted by persons of their choice. The names and addresses of such persons are to be communicated in writing to the other party and to the conciliator; such communication is to specify whether the appointment is made for purposes of representation or of assistance.

## **ROLE OF CONCILIATOR**

### **Article 10**

(1) The conciliator assists the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.

(2) The conciliator will be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.

(3) The conciliator may conduct the conciliation proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including any request by a party that the conciliator hear oral statements, and the need for a speedy settlement of the dispute.

## **ADMINISTRATIVE ASSISTANCE**

### **Article 11**

In order to facilitate the conduct of the conciliation proceedings, the parties, or the conciliator with the consent of the parties, may arrange for administrative assistance by the Director-General of the Council.

## **COMMUNICATION BETWEEN CONCILIATOR AND PARTIES**

### **Article 12**

(1) The conciliator may invite the parties to meet with him or may communicate with them orally or in writing. He may meet or communicate with the parties together or with each of them separately.

(2) Unless the parties have agreed upon the place where meetings with the conciliator are to be held, such meetings shall be held at the headquarters of the Council.

## **DISCLOSURE OF INFORMATION**

### **Article 13**

When the conciliator receives factual information concerning the dispute from a party, he may disclose the substance of that information to the other party in order that the other party may have the opportunity to present any explanation which he considers appropriate. However, when a party gives any information to the conciliator subject to a specific condition that it be kept confidential, the conciliator does not disclose that information to the other party.

## **CO-OPERATION OF PARTIES WITH CONCILIATOR**

### **Article 14**

The parties will in good faith co-operate with the conciliator and, in particular, will endeavor to comply with requests by the conciliator to submit written materials, provide evidence and attend meetings.

## **SUGGESTIONS BY PARTIES FOR SETTLEMENT OF DISPUTE**

### **Article 15**

Each party may, on his own initiative or at the invitation of the conciliator, submit to the conciliator suggestions for the settlement of the dispute.

## **SETTLEMENT AGREEMENT**

### **Article 16**

- (1) When it appears to the conciliator that there exist elements of a settlement which would be acceptable to the parties, he formulates the terms of a possible settlement and submits them to the parties for their observations. After receiving the

observations of the parties, the conciliator may reformulate the terms of a possible settlement in the light of such observations.

(2) If the parties reach agreement on a settlement of the dispute, they draw up and sign a written settlement agreement. If requested by the parties, the conciliator draws up, or assists the parties in drawing up, the settlement agreement.

(3) The parties by signing the settlement agreement put an end to the dispute and are bound by the agreement.

## **CONFIDENTIALITY**

### **Article 17**

The conciliator and the parties must keep confidential all matters relating to the conciliation proceedings, unless otherwise agreed by the parties. Confidentiality extends also the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement.

## **TERMINATION OF CONCILIATION PROCEEDINGS**

### **Article 18**

(1) The conciliation proceedings are terminated:

- (a) By the signing of the settlement agreement by the parties, on the date of the agreement; or
- (b) By a written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or
- (c) By a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or
- (d) By a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.

(2) Unless agreed otherwise by the parties, the Conciliator at the termination of the conciliation proceeding shall furnish to the Director-General of the Council a copy of the settlement agreement/declaration signed by the parties.

## **RESORT TO ARBITRAL OR JUDICIAL PROCEEDINGS**

### **Article 19**

Where the parties have agreed to conciliate and have expressly undertaken not to initiate during a specified period of time or until a specified event has occurred, arbitral or judicial proceedings

with respect to an existing or future dispute, such an undertaking shall be given effect by the arbitral tribunal or the court until the terms of the undertaking have been complied with, except to the extent necessary for a party, in its opinion, to preserve its rights. Initiation of such proceedings is not of itself to be regarded as a waiver of the agreement to conciliate or as a termination of the conciliation proceedings.

## **COSTS**

### **Article 20**

(1) The cost of the conciliation proceedings shall be as per the schedule of fees determined by the Governing Board of the Council. The term "costs" include only:

- (a) The fee of the conciliator which shall be reasonable in amount;
- (b) The travel and other expenses of the conciliator;
- (c) The travel and other expenses of witnesses requested by the conciliator with the consent of the parties;
- (d) The cost of any expert advice requested by the conciliator with the consent of the parties;
- (e) The expenses incurred by the Council in connection with the conciliation as well as its administrative charges.

(2) The costs, as defined above, are borne equally by the parties unless the settlement agreement provides for a different apportionment. All other expenses incurred by a party are borne by that party.

## **DEPOSITS**

### **Article 21**

(1) The Director-General of the Council shall request each party to deposit an equal amount as an advance for the costs referred to in article 17, paragraph (1) which are expected to be incurred.

(2) During the course of the conciliation proceedings the Director-General of the Council may request supplementary deposits in an equal amount from each party.

(3) If the required deposits under paragraphs (1) and (2) of this article are not paid in full by both parties within thirty days, the Director-General of the Council after consultation with the conciliator may suspend the proceedings or may make a written declaration of termination to the parties, effective on the date of that declaration.

(4) Upon termination of the conciliation proceedings, the conciliator renders an accounting to the parties of the deposits received and returns any unexpended balance to the parties.

## **ROLE OF CONCILIATOR IN OTHER PROCEEDINGS**

### **Article 22**

The parties and the conciliator undertake that the conciliator will not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceedings in respect of a dispute that has arisen from the same contract or legal relationship, which is the subject of the conciliation proceedings. The parties also undertake that they will not present the conciliator as a witness in any such proceedings.

## **ADMISSIBILITY OF EVIDENCE IN OTHER PROCEEDINGS**

### **Article 23**

1. A party to the conciliation proceedings, the conciliator and any third person, including those involved in the administration of the conciliation proceedings, undertake not to rely on or introduce as evidence in arbitral or judicial proceedings,

whether or not such proceedings relate to the dispute that is the subject of the conciliation proceedings;

- (a) Views expressed or suggestions made by a party in respect of a possible settlement of the dispute;
- (b) Statements or admissions made by a party in the course of the conciliation proceedings;
- (c) Proposals made by the conciliator;
- (d) The fact that a party had indicated his willingness to accept a proposal for settlement made by the conciliator;
- (e) A document prepared solely for the purpose of conciliation proceedings.

2. Paragraph 1 of this article applies irrespective of the form of the information or evidence referred to therein.

3. The disclosure of the information referred to in paragraph 1 of this article shall not be ordered by an arbitral tribunal, court or other competent governmental authority and, if such information is offered as evidence in contravention of paragraph 1 of this article, that evidence shall be treated as inadmissible. Nevertheless, such information may be disclosed or admitted in evidence to the extent required under these Rules or for the purposes of implementation or enforcement of a settlement agreement.

4. The provisions of paragraphs 1, 2 and 3 of this article apply whether or not the arbitral, judicial or similar proceedings relate to the dispute that is or was the subject matter of the conciliation proceedings.

5. Subject to the limitations of paragraph 1 of this article, evidence that is otherwise admissible in arbitral or judicial or similar proceedings does not become inadmissible as a consequence of having been used in conciliation.

## **ENFORCEABILITY OF SETTLEMENT AGREEMENT**

### **ARTICLE 24**

If the parties conclude an agreement settling a dispute, that settlement agreement is binding and enforceable. A state while enacting national legislation on conciliation may insert a description of the method of enforcing settlement agreements or refer to provisions governing such enforcement..

When implementing the procedure for enforcement of settlement agreements, a State may consider the possibility of such a procedure being mandatory.

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