



The Arbitration Foundation of Southern Africa

RULES FOR EXPEDITED ARBITRATIONS

These Rules apply for **AFSA** and **ADRASA** arbitrations.

1. SUPERVISION OF THE AFSA SECRETARIAT

- 1.1 The AFSA Secretariat is a body appointed and constituted by the Alternative Dispute Resolution Association of South Africa ("ADRASA") in order to supervise and administer the resolution of disputes under these Rules.
- 1.2 Parties to any dispute undertake to co-operate with the AFSA Secretariat in order to assist it in its functions. Parties further undertake to deal with any requests made to them by the Secretariat quickly and constructively.
- 1.3 The address of the AFSA Secretariat is *c/o* AFSA at Maisels Chambers, 4 Protea Place, Sandton, or P O Box 653007, Benmore, 2010, Telephone no. (011) 320-0600 and Fax no. (011) 320-0533, Docex 143, Randburg.
- 1.4 Any communications between the parties and the ARBITRATOR should take place through the AFSA Secretariat, which is always available to assist the parties with their queries concerning procedural aspects of the dispute and in clarifying issues arising out of these Rules.

2 INITIATING DISPUTE RESOLUTION

Any party to a dispute (the CLAIMANT) shall initiate the dispute resolution procedure by notifying the AFSA Secretariat in writing, briefly declaring the nature of the dispute. The AFSA Secretariat will itself notify the DEFENDANT/S of the dispute resolution procedure once CLAIMANT has complied with all requirements.

3 EARLY SETTLEMENT PROCEDURES

The AFSA Secretariat will take steps to encourage the parties to settle any dispute amicably and quickly. However, where in the opinion of the Secretariat the prospect of settlement is slim, the AFSA Secretariat will notify the parties that it has referred the matter to arbitration and the steps set out in the rest of the Rules will follow.

4 SELECTING THE ARBITRATOR

The AFSA Secretariat will enquire from the parties whether they have agreed on an ARBITRATOR and, if so, such ARBITRATOR will be appointed by the Secretariat to resolve the dispute. If, on enquiry, it appears that the parties have not agreed on an ARBITRATOR, then the Secretariat will itself select and appoint a suitable ARBITRATOR, and, if necessary, any substitute or alternative ARBITRATOR where appropriate. Any ARBITRATOR appointed through the AFSA Secretariat will be required to accept the Code of Conduct for ARBITRATORS, a copy of which is available from the AFSA Secretariat.

5 ADMINISTRATION FEE

5.1 Once the matter is referred to the AFSA Secretariat by the CLAIMANT, the parties will be requested to pay the prescribed administration fee and, from time to time as the proceedings progress, such other fees and costs as may be payable. The tariff for such fees and costs are available on request from the AFSA Secretariat.

5.2 Should any one party fail to pay its share of any administration fee or cost when requested by the AFSA Secretariat, that party risks losing the right to participate in the arbitration process so long as that party is in default of payment. The defaulting party may, in the discretion of the ARBITRATOR, be excluded from further proceedings depending upon the circumstances of the case. Where one party is excluded by reason of default, the Secretariat will revise the fees payable by the remaining party to cover all costs and expenses, subject to the right of the paying party to recover if so ordered by the ARBITRATOR.

6 RULES FOR ARBITRATION PROCEEDINGS

6.1 The ARBITRATOR will notify the parties of a date to meet with the ARBITRATOR in order to determine the procedure to be followed to finalise the dispute.

6.2 The ARBITRATOR may require the parties to set out their respective claims and answers in writing, or in greater detail, on such terms as he/she may require.

6.3 It shall be entirely within the power and competence of the ARBITRATOR to decide upon any matters related to the proper

preparation of the dispute for hearing and in that regard the ARBITRATOR will direct the parties accordingly.

- 6.4 The ARBITRATOR will set the date for hearing and choose the venue for the hearing and determine all matters regarding any aspect of the hearing. Moreover the ARBITRATOR can decide whether at the hearing the parties are to be given leave to adduce oral evidence or whether they will be confined to presenting their cases in writing or by some other appropriate procedure. In this regard, the ARBITRATOR will be guided by considerations of fairness, the cost-effective resolution of the dispute, and the need to resolve the dispute quickly.
- 6.5 The ARBITRATOR has the widest discretion and powers allowed by law to ensure that the just, expeditious, economical and final determination of all the disputes raised in the proceedings including the matter of costs and, if needs be, he/she shall have all the powers accorded to an ARBITRATOR acting under the AFSA Rules for Administered Arbitrations. All powers and functions exercised by the ARBITRATOR shall be in accordance with the provisions of the Arbitration Act of 1965.

7 INTERLOCUTORY MATTERS AND TEMPORARY ORDERS

Should the need arise for any party to seek interim or temporary relief before the arbitration is finalised, that party may apply to the ARBITRATOR to grant such interlocutory order or give the required temporary relief and the ARBITRATOR shall have the same power to do so as if the matter were one heard by a Judge of the High Court save that if by law such power or order cannot be exercised or given by an ARBITRATOR then, and then only, should the parties refer such matter to an appropriate Court.

8 CONFIDENTIALITY

The proceedings shall be confidential. Neither the parties nor the ARBITRATOR shall disclose to third parties any information regarding the proceedings, the award, or settlement terms unless the parties otherwise agree in writing.

9 DEFAULT

Should any party fail to co-operate either way with the Secretariat or with the ARBITRATOR with the result that in the view of the ARBITRATOR such default or omission prejudices the arbitration process then the ARBITRATOR can either –

- 9.1 give that party written notice that unless it remedies the default or omission within a given time, it will forfeit the right to continue to participate in the arbitration with the same consequences as set out in 5.2 above, or
- 9.2 warn the party in writing that its default or omission may make it liable to a punitive order of costs irrespective whether it succeeds

in the arbitration or not and such punitive award of costs may include an order of attorney and client costs or attorney and own client costs as those expressions are understood in the Uniform Rules of Court.

10 THE AWARD

- 10.1 The ARBITRATOR must give his/her award within 30 (thirty) days after finalisation of the proceedings unless the parties otherwise agree or unless the AFSA Secretariat permits an extension of that time.
- 10.2 The ARBITRATOR's award must be published to the parties in an appropriate fashion as determined by the AFSA Secretariat.
- 10.3 Unless the parties have in writing instructed the AFSA Secretariat otherwise at any time before the final award is given, there shall be no right of appeal from the award. In cases where the AFSA Secretariat has been instructed otherwise, the appeal provisions contained in Article 22 of the AFSA Rules for Commercial Arbitrations will apply.

11 TAXATION OF COSTS

At the request of any party the ARBITRATOR may direct the Secretariat to appoint a person from its Legal Costs Panel to tax any bill of costs relating to any costs order given in the arbitration and any such person shall proceed to tax the bill upon the same basis and tariff as though he/she were a taxing master acting under Rule 70 of the High Court. The ARBITRATOR shall direct which party shall pay the fee of the person appointed to tax and shall thereafter incorporate in his/her award the amount so taxed which shall then become part of his/her award.

12. NON-LIABILITY OF FOUNDATION AND ARBITRATOR

The Foundation shall not be liable to any party for any act or omission relating to an arbitration conducted under its aegis, and shall have no liability or responsibility towards the parties or to any ARBITRATOR in respect of any arbitration commenced under the aegis of the Foundation but not completed according to these Rules. An ARBITRATOR appointed by the Foundation shall not be liable for any act or omission relating to an arbitration in which he was the ARBITRATOR, except for deliberate misconduct by him.
