THE MALAYSIAN INSTITUTE OF ARBITRATORS

ARBITRATION RULES

2000 EDITION

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1. SCOPE OF APPLICATION

1.1 Where any agreement, submission or reference provides for arbitration under or in accordance with the Arbitration Rules of the Malaysian Institute of Arbitrators ("the Institute"), the arbitration shall be conducted in accordance with these Rules or such amended Rules as the Institute may have adopted to take effect on or before the commencement of the arbitration.

1.2 Where application is made to the Institute or its President for the nomination or appointment of all the arbitrators or the sole arbitrator for hearing the arbitration, the parties shall be deemed to agree to the conduct of the arbitration under these Rules, unless the parties mutually agree to the contrary.

1.3 The parties may, by written agreement, modify or alter the extent of applicability of these Rules to their arbitration.

2. COMMENCEMENT OF ARBITRATION

2.1 The arbitral proceedings in respect of a dispute shall be deemed to commence on the date on which a written request for that dispute to be referred to arbitration is received by the Respondent pursuant to the arbitration provisions in the agreement. Where there are multiple disputes which are requested to be referred to arbitration at different times prior to the request for appointment of arbitrator, the arbitral proceedings for such multiple disputes shall be deemed to commence on the date on which a written request for the latest dispute to be referred to arbitration is received by the Respondent pursuant to the arbitration provisions in the agreement prior to the request for appointment of arbitrator.

2.2 Where the arbitration provisions in the agreement does not stipulate any request to refer a dispute to arbitration, the arbitral proceedings in respect of that dispute shall be deemed to commence upon the appointment of the arbitrator.

2.3 Where the parties mutually agree on when or at what stage the arbitral proceedings are deemed to commence, then the provisions of Sub-Rules 2.1 and 2.2 shall not apply, and the arbitral proceedings shall be deemed to commence at the time or stage as the parties mutually agree.

3. APPOINTMENT OF ARBITRATOR

3.1 Unless the parties agree otherwise, the arbitration under these Rules shall be conducted before a sole arbitrator.

3.2 Where a sole arbitrator is to be appointed and the parties have failed to reach agreement on the choice of a sole arbitrator within twenty-one (21) days after receipt by a party of a written proposal to nominate a particular person as arbitrator, then either party may make a written request to the President of the Institute for appointment of the sole arbitrator.

3.3 (a) Where 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.

(b) If a party fails or neglects to appoint his choice of arbitrator within twenty-one (21) days after the other party's written notification of appointment of the other party's choice of arbitrator, then that other party may make a written request to the President of the Institute to appoint the second arbitrator.

(c) If the two arbitrators [appointed under sub-rules 3.3(a) and 3.3(b)]do not agree on the choice of the presiding arbitrator within thirty (30) days after their appointment, the presiding arbitrator shall be appointed by the President of the Institute.

3.4 A written request to the President of the Institute for the appointment of arbitrator shall include or be accompanied by the following particulars:

(a) the names, addresses and contact numbers of the parties to the dispute;

(b) copies of the relevant parts of the contract documents in which the arbitration clause is contained or under which the arbitration arises, and documentary proof of the contract made between the parties;

(c) name of the project wherein the dispute has arisen;

(d) brief, summarized description of the dispute; and

(e) a request that the President appoint an arbitrator, and the basis or ground of such request.

3.5 A copy of the written request for appointment of arbitrator shall also be sent by the requesting party to the other party. If the other party does not question in writing the authority of the President of the Institute to appoint arbitrator within seven (7) days from the receipt of the written request, the other party shall be deemed to have agreed that the President of the Institute is the proper appointing authority.

3.6 Subject to receipt of the initial deposit for fees and costs from the requesting party, the President of the Institute shall forthwith proceed to appoint the arbitrator and after getting the arbitrator's consent to act, the President shall notify in writing both the parties and the arbitrator of the appointment.

4. DISCLOSURE AND CHALLENGE OF ARBITRATOR

4.1 A prospective arbitrator should disclose to those who approach him in connection with his possible appointment in any circumstances which he considers to be likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, as soon as practicable after being appointed or chosen, should disclose such circumstances to the parties unless the parties have already been informed by him of these circumstances.

4.2 A party who nominated or appointed or consented to the appointment of a particular arbitrator may challenge that arbitrator only for reasons for which the party becomes aware after the appointment has been made.

4.3 A party who intends to challenge an arbitrator's appointment shall send written notice of his challenge within fourteen (14) days after the appointment of that arbitrator has been notified to the challenging party or the relevant circumstances became known to the challenging party, whichever is later. If there is no challenge before the expiry of the said fourteen (14) days the party concerned shall be deemed to have accepted the arbitrator without any challenge.

4.4 The challenge shall be in writing and shall state the reasons for the challenge and also the case authorities (if any) in support thereof.

4.5 The written challenge shall be notified to -

(a) the other party ;
(b) the arbitrator who is challenged ; and
(c) other members (if any) of the arbitral tribunal.

4.6 (a) If the other party agrees to the challenge, the arbitrator shall withdraw from his office as arbitrator.

(b) If the other party does not agree to the challenge, the arbitrator may also withdraw from his office as arbitrator.

(d) Withdrawal from office pursuant to clause (a) or (b) does not imply acceptance nor approval of the validity of the grounds for the challenge.

4.7 If the other party does not agree to the challenge and the challenged arbitrator does not withdraw, the decision on the challenge shall be made either by the arbitrator or, if the arbitrator states a special case to the High Court, by the High Court. If the High Court or the arbitrator sustains the challenge, a substitute arbitrator shall be appointed or chosen pursuant to the procedure applicable to the appointment of arbitrator.

5 REPLACEMENT OF ARBITRATOR

5.1 In the event of death, disability, resignation or withdrawal under Rule 4.6 of an arbitrator, a suitable arbitrator shall be appointed or chosen pursuant to the procedure provided for in Article 3, in so far as the same are applicable to the said event.

5.2 In the event that an arbitrator fails to act or in the event of impossibility on the part of the arbitrator to perform his functions, the procedure in respect of the challenge and replacement of an arbitrator provided in the preceding articles shall apply.

5.3 The question whether or not the arbitrator fails to act or impossibility on the part of the arbitrator to perform his functions shall be determined by mutual agreement in writing between the parties, or failing such agreement, shall be decided by the High Court .

6. JURISDICTION AND POWERS OF THE ARBITRATOR

6.1 In addition to the jurisdiction and powers conferred by mutual agreement of the parties or by the express provisions of these Rules, the arbitrator shall have jurisdiction to :-

(1) decide on questions as to his jurisdiction;

(2) decide on questions as to the existence, validity, and extent of the contract between the parties;

(3) determine any question of law and/or fact arising in the arbitration;

(4) make any declaratory order as may be necessary or expedient for final disposal of the disputes in the arbitration;

(5) order any correction or rectification of the contract or arbitration agreement or the reference, but only to the extent necessary to rectify any manifest error or mistake which he determines to be common to all the parties;

(6) decide on any question of good faith, dishonesty or fraud arising in the dispute;

(7) decide on questions as to res-judicata, sub-judice;

(8) proceed with the arbitration notwithstanding the failure or refusal of any party to comply with these Rules or to attend any meeting or hearing, but only after the arbitrator has given that party written notice that he intends to proceed in the absence of that party, or where appropriate or expedient, make peremptory orders to compel a party's compliance with the arbitrator's orders or directions.

(9) summarily strike out or dismiss the claims or counterclaims for want of prosecution;

(10) direct the parties to focus on specific issues of importance and to address him on those issues from the point of facts and/or law;

(11) order any party to furnish him with such further details or evidence of its case, in fact or in law, as he may require;

(12) make one or more interim awards, or decline to make an interim award;

(13) order the parties to make security deposits and/or interim payments towards the costs of the arbitration;

(14) receive and take into consideration such written or oral evidence as he shall decide to be relevant, whether or not strictly admissible in law;

(15) hold meetings and hearings in Malaysia and elsewhere;

(16) express his awards in any currency which he thinks fit or appropriate;

(17) award interest on any sum from and to any date at such rates as he thinks appropriate, including pre-award interest and post-award interest;

(18) correct any accidental mistake or omission in his awards.

Provided always that if there is statutory prohibition or exclusion of power or jurisdiction of an arbitrator, then the jurisdiction of the arbitrator may only be invoked or exercised to the extent which is not prohibited or excluded by the statute.

6.2 In addition to the powers conferred by mutual agreement of the parties or by the express provisions of these Rules, the arbitrator shall have the following powers:-

(1) with the consent of both parties, to allow other parties to be joined in the arbitration with the said other parties' express consent, and make a single final award determining all disputes between them;

(2) upon the application of either party, to award summary judgment for the claims or counterclaims or part thereof;

(3) extend or abridge any time fixed or directed by him in respect of any step or proceeding in the arbitration;

(4) order that a site visit and inspection of the subject-matter be carried out forthwith or at such time as he thinks fit, and that visual evidence of the conditions of the site and/or the subject-matter be taken or recorded;

(5) allow any party to amend his Statement of Claim, Statement of Defence, Counterclaim or subsequent pleadings or part thereof on such terms as to costs and otherwise as the arbitrator shall think fit and just;

(6) rely on his own knowledge and experience in any field, or appoint one or more assessors or experts on any matter (including law) to assist him in the conduct of the arbitration;

(7) conduct such inquiries as are consistent with the rules of natural justice as may appear to him to be necessary or expedient;

(8) direct the parties to produce to him, and to each other for inspection, any property or thing or documents available for inspection, and to supply copies of documents or photographs or video tapes of the property or thing as he may consider relevant and to order the parties to swear or affirm an affidavit verifying the list of documents, things and/or properties ordered to be produced;

(9) direct the hearing to be conducted in Malaysia or outside Malaysia, and at such time and venue as he thinks fit or appropriate;

(10) direct the parties to submit and exchange witness statements and/or affidavits as to the evidence of witnesses, and direct which of the makers of such statements or deponents of such affidavits are to attend before him for oral examination of evidence;

(11) with the mutual consent of the parties, direct whether or not the Evidence Act of Malaysia should apply to the arbitration, and if so, which parts or extent thereof, and further direct whether or not certain specific rules of evidence commonly applied in Commonwealth countries should be applicable to the arbitration;

(12) order the preservation, storage, sale or disposal of any property or thing under the control or possession of any of the parties and which forms part of the subject-matter of arbitration, and direct as to recording of evidence on such property or thing and as to the custody of the sale proceeds arising therefrom;

(13) make peremptory orders to compel any party to comply with the arbitrator's directions and to make further orders in the event of failure to comply with peremptory order.

Provided always that if there is statutory prohibition or exclusion of power or jurisdiction of an arbitrator, then the jurisdiction of the arbitrator may only be invoked or exercised to the extent which is not prohibited or excluded by the statute.

6.3 In addition, the arbitrator shall have such further jurisdiction and powers as may be conferred upon or allowed to him by the laws of Malaysia or the laws of another country which the parties agree to be the laws applicable to the arbitration, by the contract between the parties and/or by the provisions of these Rules.

6.4 Where the provisions of these Rules prescribe or stipulate the procedure and extent of the jurisdiction and powers of the arbitrator, such jurisdiction and powers shall be exercised in accordance with these Rules. If these Rules are silent as to the procedure and extent of the jurisdiction and powers of the arbitrator, then such jurisdiction and powers shall be exercised in accordance with the relevant rules and principles of the applicable laws (including rules of procedure of the High Court of Malaya or equivalent superior courts).

7. SECURITY TOWARDS COSTS AND PAYMENTS

7.1 The party requesting the President of the Institute for the nomination or appointment of an arbitrator shall be required to provide security towards arbitrator's costs of the award, such initial security being RM5,000/- and is a prerequisite before an arbitrator is nominated or appointed.

7.2 Within two (2) weeks from the appointment of an arbitrator, the other party shall also provide an initial security of RM5,000/- towards arbitrator's costs. If the other party fails or neglects to do so, the party requesting for the nomination or appointment shall provide full initial security of RM5,000/= towards arbitrator's costs.

7.3 The arbitrator may require the parties to provide in equal proportions security deposit for half of the total computed or estimated fees and disbursements before convening the preliminary meeting or before issuing the preliminary procedural directions. During the course of the arbitration proceedings, the arbitrator may require the parties to provide additional security towards arbitrator's costs, and thereupon the parties shall pay additional security in equal proportion. If a party fails or refuses to pay his portion of the additional security towards costs, the arbitrator at his exclusive discretion may either -

(a) proceed with the arbitration proceedings and hearings, and may exercise his lien over the award until the full security towards costs has been paid by both parties or by either of them; or

(b) suspend the further arbitration proceedings and/or hearings until and unless the full security towards costs as directed has been paid by both the parties or by either of them.

7.4 Payments of security towards costs shall be by cheques made payable to the Institute and crossed A/C Payee only or such other mode of payment as the Institute may notify in writing.

7.5 The security towards costs may be utilized to set off the costs of the award.

7.6 If the security towards costs is not sufficient to pay for the full amount of the arbitrator's costs and fees, then the party who takes up the award shall pay the difference before taking up the award.

7.7 If the security towards costs exceeds the arbitrator's costs and fees, then the Institute shall refund the excess free of interest to the party or parties in accordance with the arbitrator's award or direction.

7.8 During the course of the arbitration, the arbitrator shall be entitled to draw down his fees and costs from the security towards costs deposited by the parties with the Institute, less 10% of the fees as the Institute's administrative and co-ordination charges. The arbitrator shall notify the parties of the amount of fees and costs to be drawn down, provided always that the amount of the drawdown shall not exceed the fees and costs due to the arbitrator at that point of time. [5th Council minutes 10 Sep 2009]

7.9 If the hearing dates have been fixed and such hearing dates are cancelled or vacated at the request of a party to the arbitration, the arbitrator whose fees are based on time-cost reserves the right to charge cancellation fees in the following proportions:

	Period between request for cancellation and the hearing date	Percentage of fees chargeable, as compared with proceeding with hearing
(a)	Less than 3 months but more than 1 month	50%
(b)	Between 1 month and 1 week	75%
(c)	Less than 1 week	100%

In deciding whether or not to exercise this right, the arbitrator should have regard to whether or not the arbitrator can fill the vacated days with other remunerative works.

7.10 In the event of a mutual settlement of issues or disputes by agreement between the parties before the award is made, the fees and expenses payable to the arbitrator shall be paid to the Institute by the party or parties responsible for so doing under the terms of the settlement within 14 days after notification of the amount, irrespective of whether or not a consent award is required to be made or published. If the terms of the mutual settlement is silent as to which party is responsible for paying the arbitrator's fees and expenses, the parties in arbitration shall be jointly and severally responsible for paying the arbitrator's fees and expenses.

8. PARTIES AND REPRESENTATION

8.1 The parties may agree as to which party shall be designated as the Claimant and which party the Respondent. If the parties fail or neglect to agree as aforesaid, then the party who made the first written request to the President of the Institute for nomination or appointment of the arbitrator for the arbitration shall be designated as the Claimant and the other party shall be the Respondent.

8.2 A party may conduct his own case in person or be represented by lawyers, or other advisers or representatives of his choice (hereinafter referred to as "Representative").

8.3 If a party wishes to change his Representative, the party shall give written notice of the change (including the new address for service) to the arbitrator and the other party, and shall also enclose therewith a written confirmation from the new Representative that he is able and willing to conduct the party's case according to the schedule and dates which have been set by the arbitrator or according to revised schedule and dates to be approved by the arbitrator.

8.4 If, for any reason not attributable to the other party, a party's new Representative is not able or willing to conduct his case on the dates or by the schedule which has already been set by the arbitrator, then the costs thrown away or occasioned by the postponement or adjournment of the hearings shall be borne by the party who changes his Representative, and such costs may be taxed forthwith and be ordered to be paid forthwith and in any event.

8.5 Notwithstanding any party's change of his Representative, the arbitrator may refuse to allow any postponement or deferment of hearing or arbitration schedules.

9. ASSESSOR AND ADVICE

9.1 With the consent of the parties, the arbitrator may appoint an assessor to assist him in the conduct of the arbitration.

9.2 The choice and roles of the assessor may be agreed between the parties, or failing such agreement, shall be decided by the arbitrator.

9.3 The assessor may sit together with the arbitrator during the whole or such part(s) of the proceedings or hearings as the arbitrator may direct.

9.4 Notwithstanding the appointment of an assessor, the arbitrator is not bound to take his advice or opinion, and the arbitrator must exercise his own judgment on every issue which requires decision or determination in the arbitration.

9.5 With or without the consent of the parties, the arbitrator may seek legal, technical and/or other advice on any matter arising out of or in connection with the arbitration. Such advice shall be reduced into writing, and the substantive contents of the advice shall be made available by the arbitrator to the parties for the parties' comments, rebuttal or information. Upon the written request of a party to the arbitration, the arbitrator shall disclose the identity of the person or firm who has given such advice. Provided always that the arbitrator is entitled to require the parties and their Representative to undertake in writing not to interfere with, disturb or communicate with the said person or firm in respect of the said advice.

9.6 Notwithstanding the receipt of the advice under Rule 9.5, the arbitrator is not bound to accept or follow the advice, and the arbitrator must exercise his own judgment on every issue which requires decision or determination in the arbitration.

9.7 A party who differs from or disagree with the written advice or opinion or part thereof of the assessor or of the adviser shall state so in writing and give reasons for such difference or disagreement not later than the last date allowed to him for making his closing submission. Any failure or neglect to do the aforesaid shall be deemed to be waiver of the party's right to object to or challenge the accuracy and correctness of the advice or opinion.

9.8 The costs of the assessor and the costs of seeking the advice shall form part of the costs of the award.

10. VENUE

10.1 The parties by mutual agreement may choose the venue of arbitration.

10.2 If the parties do not agree on the venue of arbitration, the arbitrator shall decide on the venue of arbitration.

10.3 The Arbitration Centre of the Institute, when available, shall be the preferred choice of venue for arbitration.

11. LANGUAGE

11.1 The language of the arbitration shall be English, unless the parties otherwise agree.

11.2 The arbitrator may direct any party to provide translation of any documents or any witness' oral evidence from another language to English language or into the language of the arbitration, and such copies of translation shall be submitted to the arbitrator and a set thereof to be sent to the other party.

11.3 The arbitrator may appoint a suitable or qualified translator or interpreter to translate documents or oral evidence from another language into English language or into the language of the arbitration, and to revise, check and amend the copies of translation provided by any party.

11.4 The costs of appointing a translator or interpreter under Rules 11.3 and 11.6 shall form part of the costs of award.

11.5 Notwithstanding the foregoing provisions in this Article, the parties shall have no basis or ground whatsoever to object to or challenge the proceedings or the award if parts of the documentary or oral evidence in the arbitration are expressed in another language(s) other than English, which other language(s) are understood by both the parties or their officers who attend the proceedings or their Representatives.

11.6 Unless the arbitrator otherwise orders, witnesses shall be entitled to give their evidence in the language of their choice and the Arbitrator may order the translation of that evidence into the language of the arbitration by a person mutually agreed by the parties or by a suitably qualified person to be appointed by the arbitrator.

12. PRELIMINARY MEETING AND PROCEDURAL DIRECTIONS

12.1 The arbitrator may issue procedural directions to the parties either at preliminary meeting(s) or by letter or written notices without any preliminary meeting, and such procedural directions may be issued at various stages of the arbitration proceedings.

12.2 Within ten (10) days after accepting his appointment the arbitrator, if he decides to convene a preliminary meeting, shall send to both parties a written notice stating the date, time and place of his proposed preliminary meeting for the purpose of giving procedural directions in the arbitration or, if he decides not to convene a preliminary meeting, shall proceed to issue procedural directions in accordance with the provisions of Rule 12.5 below.

12.3 Within seven (7) days from the receipt of such written notice or such shorter time as the arbitrator may prescribe, the parties or their Representatives shall confirm in writing whether or not they are able to attend the preliminary meeting at the proposed date, time and place.

12.4 If any of the parties is unable to attend a preliminary meeting or, having confirmed his ability to attend, fails or refuses to attend the said preliminary meeting, the arbitrator may proceed with the preliminary meeting or may adjourn or vacate the said preliminary meeting, and the arbitrator may set procedural directions without having to convene a preliminary meeting.

12.5 When the arbitrator intends to set procedural directions without convening a preliminary meeting, the arbitrator shall give a written notice to that effect to the parties and shall enclose together with that notice a draft of the procedural directions which he proposes to make. A party who intends to propose any amendment or alteration to the draft procedural directions shall give his written comments with reasons within ten (10) days of his receipt of the draft procedural directions, failing which the party shall be deemed to have agreed to the draft procedural directions without any amendment or reservation. Upon receipt of the written comments, the arbitrator may amend or refuse to amend his draft procedural directions as he may think fit or proper. After the expiry of ten (10) days from the date of sending the written notice of intention to set procedural directions without convening a preliminary meeting, the arbitrator may proceed to issue procedural directions irrespective of whether or not any written comment has been made by any party.

12.6 Unless the parties agree otherwise, the procedural directions shall include, where appropriate:

(a) the time frame and dates for the respective parties to submit and serve pleadings;

(b) the procedure, time frame and dates for the discovery of documents, inspection of documents;

(c) the procedure, time frame and date for exchange of witnesses' statements and/or affidavit evidence;

(d) procedure and hearing dates for oral evidence of witnesses;

(e) interlocutory matters;

(f) security for costs of awards;

(g) such other procedural matters and directions as may be appropriate.

12.7 Notwithstanding the provisions in this Article, the parties may agree in writing to set their own procedure for the arbitration, and in the event of such mutual agreement the procedure provided in these Rules shall apply with modifications to incorporate the agreement between the parties.

13. PLEADINGS

13.1 Pleadings include statement of Claim, Defence, Counterclaim, Reply, Defence to Counterclaim and any other pleadings as the arbitrator may direct.

13.2 (1) Every pleading in an arbitration must bear on its face -

(a) the date when the pleading is signed;
(b) the title of the arbitration; and
(c) the description of the pleading.

(2) Every pleading must, if necessary, be divided into paragraphs and sub-paragraphs numbered consecutively, each allegation being so far as convenient contained in a separate paragraph or sub-paragraph.

(3) Every pleading of a party must be signed by the party's Representative, or by the party, if he sues or defends in person.

13.3 (1) Subject to the provisions of this rule and rules 13.5 and 13.7, every pleading must contain, and contain only, a statement of the relevant facts and details on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which those facts and details are to be proved.

(2) The facts and details pleaded in a pleading must be arranged in a logical or systematic manner according to issues, topics, chronology of events, heads of claims, and/or with the arbitrator's approval, such other classification or arrangement.

(3) Where it is necessary or expedient to give particulars of debt, expenses, losses or damages, those particulars can be set out in separate documents, appendices and/or schedules referred to in the pleading and attached to or enclosed with the pleading.

(4) Where there are facts and details on numerous or multiple items of similar kind or nature, such facts may be summarized in the form of tables, charts, graphs and/or other statistical or graphical presentation to be referred to and enclosed with the pleading, and as far as practicable, such enclosure should bear some brief explanatory notes to enable the arbitrator and the other party to understand the same.

(5) The appendices, schedules, tables, charts and other documents referred to in sub-rules (3) and (4) above shall be numbered in a logical manner for easy identification and reference.

13.4 A party must in any pleading subsequent to a statement of claim plead specifically any matter, for example, performance, release, any relevant statute of limitation, fraud or any fact showing illegality -

(a) which he alleges makes any claim or defence of the opposite party not maintainable; or

(b) which, if not specifically pleaded, might take the opposite party by surprise; or

(c) which raises issues of fact not arising out of the preceding pleading.

13.5 (1) A party may by his pleading raise any point of law. A point of law may be raised by reference to the relevant clause in the contract and/or to the relevant provision of the statute and/or by stating concisely and precisely the point or contention of law.

(2) A pleading shall not include any of the following matters:-

(a) a party's arguments;

(b) reference or citation of cases or authorities, except where the point or contention of law is usually identifiable by reference to the designation of the case or authority.

(c) irrelevant allegations which are scandalous or embarrassing.

13.6 (1) Subject to paragraph (4), any allegation of fact made by a party in his pleading is deemed to be admitted by the opposite party unless it is traversed by that party in his pleading or a joinder of issue under rule 13.7 which operates as a denial of it.

(2) A traverse may be made either by a denial or by a statement of non-admission and either expressly or by necessary implication.

(3) Subject to paragraph (4), every allegation of fact made in a statement of claim or counterclaim which the party on whom it is served does not intend to admit must be specifically traversed by him in his defence or defence to counterclaim, as the case may be; and a general denial of such allegations, or a general statement of non-admission of them, is not a sufficient traverse of them. Provided always that if a paragraph of a pleading contains more than one allegation of fact, a traverse of that paragraph in its entirety is deemed to be a traverse of all allegations of facts contained therein.

(4) Any allegation that a party has suffered loss or damage and any allegation as to the amount of loss or damage is deemed to be traversed unless specifically admitted.

13.7 (1) If there is no reply to a defence, there is an implied joinder of issue on that defence.

(2) Subject to paragraph (3) -

(a) there is at the close of pleadings an implied joinder of issue on the pleading last served; and

(b) a party may in his pleading expressly join issue on the next preceding pleading.

(3) There can be no joinder of issue, implied or express, on a statement of claim or counterclaim.

(4) A joinder of issue operates as a denial of every allegation of fact made and of every point of law or contention raised in the pleading on which there is an implied or express joinder of issue unless, in the case of an express joinder of issue, any such allegation is excepted from the joinder and is stated to be admitted, in which case the express joinder of issue operates as a denial of every other such allegation or point.

13.8 A party is bound by his pleadings, and he is not allowed to prove a case or defence outside the ambit of his pleadings.

14. STATEMENT OF CLAIM

14.1 The arbitrator may direct the claimant to submit statement of claim in writing to the arbitrator and serve a copy thereof on the Respondent within thirty (30) days from the date of the preliminary hearing or the issuance of the procedural requirements.

14.2 The statement of claim shall comply with the relevant provisions in Article 13. The statement of claim shall also include all material facts supporting the claims, the points at issue/the relief or remedies sought.

15. STATEMENT OF DEFENCE AND COUNTERCLAIM

15.1 The arbitrator may direct the Respondent to submit a statement of defence in response to the claimant's statement of claim within thirty (30) days from the date of the Respondent's receipt of the statement of claim.

15.2 The statement of defence shall comply with the provisions of Rule 13.6.

15.3 The Respondent who alleges that he has any claim or is entitled to any relief or remedy against the claimant in the arbitration in respect of any matter arising out of or under the same contract or project or transaction as that of the subject-matter the claimant's claims may make a counter-claim against the Claimant, and where the Respondent does so, he must add the counterclaim or claim of set-off to his defence. If the Claimant refuses or fails to proceed with his claims, the Respondent is still entitled to proceed with his counter-claims. Provided always that the addition or joinder of counterclaims and cross-claims shall not exceed the ambit of the arbitration clause, unless the parties otherwise agree.

15.4 The provisions of Rule 14.2 shall apply to a counterclaim or a claim relied on for the purpose of set-off.

15.5 Where the Respondent makes a counterclaim, the arbitrator shall allow the Claimant to serve a Defence to the Counterclaim.

16. SUBSEQUENT PLEADINGS

16.1 The arbitrator has the discretion to decide whether or not to direct any subsequent pleadings to be exchanged or served, and if so, the timeframe and procedure thereof.

16.2 The arbitrator may direct the Claimant to serve a Reply to the Defence within such time as the arbitrator may prescribe, and if he so directs, the arbitrator shall also direct the Respondent to serve a Reply to the Defence to Counterclaims.

16.3 Where the Claimant submits a Reply to the Defence as well as a Defence to Counterclaim, he shall submit them in a single document described as Reply and Defence to Counterclaim.

16.4 No pleadings subsequent to the Reply to the Defence to Counterclaim shall be served except with the leave of the arbitrator, and such leave may only be granted in exceptional circumstances.

16.5 (1) The pleadings in an arbitration are deemed to be closed -

(a) at the expiration of 7 days after service of the last Reply directed or allowed by the arbitrator, or, if there is no reply but only a defence to counterclaim, after service of the defence to counterclaim, or

(b) if there is neither a reply nor a defence to counterclaim, at the expiration of 7 days after the service of the defence.

(2) The pleadings in an arbitration are deemed to be closed at the time provided by paragraph (1) above notwithstanding that any request or orders for particulars has been made but has not been complied with at that time.

17. AMENDMENT OF PLEADINGS

17.1 A party may amend his pleadings with the leave of the arbitrator.

17.2 Subject to Rule 17.3 the arbitrator may, on the written application of any party at any stage of the proceedings but before the close of the hearing, allow that party to amend his pleadings on such terms as to costs or otherwise as may be just and convenient. The arbitrator shall decide on the application for amendment within 14 days after the close of the parties' arguments and/or submissions thereon.

17.3 In considering whether or not to allow any amendment to pleadings, the arbitrator shall apply the following principles wherever applicable -

(a) any amendment which introduces a matter outside the jurisdiction of the arbitrator shall not be allowed, unless the parties agree otherwise;

(b) as a general rule, an application to amend pleadings before the commencement of the hearing ought to be allowed ;

(c) any amendment which substantially changes the character of the case or defence or which introduces a new and inconsistent case or defence, if applied for at any time after the commencement of the hearing, ought not to be allowed unless the parties agree otherwise or save in exceptional circumstances or unless the arbitrator is satisfied that there is no surprise and no injustice to the opposite party;

(d) any costs occasioned by, or thrown away as a result of, the amendment shall be borne by the amending party, in any event;

(e) subject to sub-paragraphs (a) to (d) above, all amendments ought to be allowed if the opposite party can be compensated by costs.

17.4 Upon allowing an amendment to pleadings, the arbitrator shall also make consequential orders as to the subsequent reply or response to the amendment, the subsequent proceedings including exchange of witnesses' statements or affidavits, hearing and other procedural matters as the arbitrator thinks fit and just.

17.5 (1) Amendments may either be incorporated into the original pleadings or be included in a separate document to be attached or appended to the original pleadings.

(2) Where the amendments allowed are so numerous or of such nature or length that to make written alterations of the document so as to give effect to the amendments would make it difficult or inconvenient to read, a fresh document, amended as so allowed, must be prepared and served.

18. FURTHER ARTICULARS OF PLEADINGS

18.1 The arbitrator may, in accordance with the provisions of this Article 18, order a party to serve on any other party further particulars of any claim, defence or other matter stated in his pleading, and the order may be made on such terms as the arbitrator thinks just.

18.2 Subject to Rules 18.3 to 18.7 below, further particulars of pleadings may be ordered to be served in any of the following circumstances :-

(a) where the pleadings fail to contain the material facts and particulars to the extent or particularity required by these Rules; or

(b) Where the pleadings fail to include sufficient particulars necessary to give fair notice and adequate opportunity to answer the same.

18.3 A party who asks for further particulars of his opponent's pleadings must give a written request setting out the further particulars he proposes to ask, and such written request must be served within 14 days after his receipt of that pleading. If a party fails or neglects to give such written request to the opposite party within the said 14 days, he is deemed to have waived any right to further particulars.

18.4 If the opposite party refuses or fails to supply the further particulars or part thereof, within 14 days of such written request, then the requesting party may apply to the arbitrator for an order for further particulars.

18.5 A request or an application for further particulars does not operate as an extension of time for filing any pleadings and shall not relieve the requesting party from his obligation to prepare and serve his next pleading. If the requesting party has served his next pleading when the arbitrator orders further particulars of the opposite party's pleading to be served, then the requesting party shall be entitled to reply or respond to the further particulars either by amending the requesting party's pleadings or by a separate document in reply to the further particulars.

18.6 If a party requests or applies for further particulars but fails or neglects to serve his next pleading within time, there shall be deemed to be joinder of issues raised in the opposite party's immediately preceding pleading, and the pleadings shall be deemed to be closed within 14 days from the expiry of the timeframe for the requesting party to serve his next pleading, and thereafter, the requesting party shall not be entitled to any further particulars from the opposite party.

18.7 Notwithstanding any contrary provisions contained in the foregoing sub-rules, the arbitrator may, in lieu of further particulars of pleading, order the opposite party to include all the further particulars or such relevant part thereof in the witnesses' statements or affidavits to be served before the commencement of the hearing, and in such event, the arbitrator should also allow the requesting party an opportunity to serve supplementary witnesses' statements or affidavits in response to the further particulars which were not covered by the pleadings and allow reasonable time for the requesting party to prepare for its rebuttal or response thereto.

19. DISCOVERY AND INSPECTION OF DOCUMENTS

19.1 (1) After the close of the pleadings in an arbitration where there are substantial dispute of facts there shall be mutual discovery by the parties of the documents which are or have been in their possession, custody or power relating to matters in question in the arbitration.

(2) Where there are no substantial dispute of facts, the arbitrator may issue a written notice to that effect and dispense with mutual discovery of documents.

19.2 Notwithstanding any contrary provisions in this Article 19, the parties may mutually agree to dispense with or limit the discovery of documents which they would otherwise be required to make to each other.

19.3 Where the documents to be discovered are voluminous or numerous, the mutual discovery may be carried out as follows:

(a) the parties shall make discovery by exchanging lists of categories or sub-categories of documents in the respective party's possession, custody or power within the timeframe directed by the arbitrator; and

(b) within 14 days of such discovery, there shall be inspection of each other's documents; and

(c) the party inspecting the documents shall be entitled to obtain photocopies or copies of such of the inspected documents as he may state in writing, subject to reasonable payment to cover the cost of printing or photocopying the documents. The other party shall supply copies of the requested documents within 14 days from the receipt of the written request.

19.4 Where the documents to be discovered are not voluminous or numerous, the mutual discovery maybe carried out as follows:

(a) the parties shall make discovery by exchanging lists of documents which set out a list of documents which are or have been in each party's possession, custody or power, within the timeframe directed by the arbitrator;

(b) within 14 days of such discovery, each party may identify in writing the documents of which he wants copies to be supplied by the other party, and the other party shall supply copies of the same within 14 days from the receipt of the written notice; and

(c) the party who obtains copies of documents from the other party shall pay reasonable costs of printing or photocopying the documents.

19.5 (1) All documents which are or have been in the possession, custody or power of a party shall be disclosed by him by including them in the list of documents or list of categories of documents, as the case may be. Provided always that a party may claim privilege from disclosure in accordance with the applicable law. A party who claims privilege shall state the grounds of claiming privilege and disclose the nature or type of documents in respect of which privilege is claimed.

(2) If the claim for privilege is disputed by the other party, then the arbitrator shall decide on the question whether or not the documents are protected by any privilege.

(3) No party shall withhold discovery or refuse to allow discovery or inspection of documents on the ground of irrelevancy or inadmissibility of the documents in evidence.

19.6 Subject to Rule 19.7 the arbitrator may at any time, on the application of any party, order any other party to make an affidavit stating whether any document or class of documents specified or described in the application is or has been in his possession, custody or power, and if not then in his possession, custody or power when he parted with it and what has become of it. An application for an order under this rule must be supported by an affidavit stating the belief of the deponent that the party from whom discovery is sought has, or at some time had, in his possession, custody or power the document or class of documents specified or described in the application and that it relates to one or more of the matters in question in the arbitration.

19.7 On the hearing of an application for specific discovery under Rule 19.6 the arbitrator may refuse to order specific discovery if satisfied that discovery is not necessary or if the arbitrator is of the opinion that discovery is not necessary either for disposing fairly of the matter or for saving costs.

19.8 In considering an application for specific discovery, the arbitrator may order any party to produce to the arbitrator any document in his possession, custody or power relating to any matter in question in the arbitration and the arbitrator may deal with the document when produced in such manner as he thinks fit or just.

19.9 If a party fails or refuses to comply with the arbitrator's order as to specific discovery, the arbitrator may draw adverse inferences against that party arising from such failure or refusal.

19.10 Unless otherwise expressly permitted by written law applicable to the arbitration, no discovery of documents shall be ordered against a person or company or entity who is not a party in the arbitration. Provided always that the aforesaid provision shall not prejudice a party's right to obtain subpoena to compel a relevant witness to produce relevant documents before the arbitrator during the oral hearing.

20. INTERIM MEASURES OF PROTECTION

20.1 (1) On the application of any party to the arbitration, the arbitrator may, in a just and appropriate case, make an order for the detention, custody or preservation of any property which is the subject-matter of the arbitration, or as to which any question may arise therein, or for the inspection of any such property in the possession of a party to the arbitration.

(2) Where the right of any party to a specific fund is in dispute in an arbitration, the arbitrator may, on the application of a party to the arbitration, order the fund to be paid into Court or to be paid to the Institute or otherwise secured pending the outcome of the arbitration.

20.2 (1) Where, on the application of any party to the arbitration, the arbitrator considers it just and necessary or expedient for the purpose of obtaining full information or evidence in any matter before or during the hearing, the arbitrator may order, or require any sample to be taken of any property or thing which is the subject-matter of the arbitration or as to which any question may arise therein, any observation or record or experiment to be made thereon.

(2) The arbitrator may by order authorize any person to enter upon any premises or immovable property in the possession or control of any other party so as to enable the order under Rule 20.2(1) to the carried out. If the other party refuses or fails to comply with the said order by allowing such entry, the arbitrator may draw adverse inference that the information or evidence to be obtained through such order would be against the other party's case.

20.3 Where the subject-matter in the arbitration or the thing as to which any question arises therein is of a perishable nature or is likely to deteriorate if kept or which for any other valid reason it is desirable to sell or dispose off forthwith, the arbitrator may, on the application of the party to the arbitration, make an order for the sale or disposal or custody of the subject-matter or thing during the pendency of the arbitration proceedings and also an order as to the safe-keeping of the proceeds of sale or disposal.

20.4 In making orders as to interim measures of protection under the foregoing provisions the arbitrator may also make other ancillary or incidental orders as may be desirable in the interest of justice and may also give directions as to further proceedings in the arbitration.

20.5 The arbitrator may direct a site visit be carried out forthwith, and during the site visit, the arbitrator may take his own notes and make his own observations of the nature conditions and things observed at the site, and these notes and observations shall form part of the evidence in the arbitration. If a party who has possession or control of the site or place refuses to cooperate or facilitate the site visit, the arbitrator may draw adverse inferences against that party. At the written application of either party, the arbitrator may supply the parties with a set of his written notes recorded by him during the site visit.

21. EXPERTS

21.1 Each party may call expert witness to give opinion evidence on his behalf in respect of any professional or technical expertise areas, subject to the provisions in this Article 21. The arbitrator may also seek the opinion of expert(s) of his own choice, provided that the parties are entitled to know the expert's opinion and to ask him, through the arbitrator, questions pertaining to his opinion.

21.2 The arbitrator may limit the number of expert witness which each party is allowed to call and may also issue directions as to the procedure for the expert witnesses' statements and evidence.

21.3 Without prejudice to the generality of Rule 21.2 the arbitrator may direct that an expert witness shall, before he gives oral evidence in the hearing, submit a written statement of his opinion or expert evidence to the arbitrator and serve a copy thereof to the other party in the arbitration within such timeframe as may be stipu lated by the arbitrator.

21.4 Without prejudice to the generality of Rule 21.2 the arbitrator may direct the expert witnesses from various parties to the arbitration to confer, discuss and attempt to agree on matters and issues covered by their statements as far as possible and to narrow down the issues or differences between them and to prepare a list of agreed matters and a list of disputes or matters within the ambit of the expert witnesses' statements or evidence. The arbitrator may also direct the expert witnesses to state in writing and produce copies of the references, texts, and sources of materials on which the experts rely upon or intend to rely upon to support their statements or evidence.

21.5 The arbitrator shall have the power to decide on the question of whether or not a person qualifies as an expert witness in the arbitration.

21.6 The costs of the expert(s) called by the arbitrator himself shall form part of the costs of the award.

22. EVIDENCE AND HEARING

22.1 Subject to the written agreement of the parties to the contrary, the arbitrator may direct that there shall be no oral hearing in an arbitration where the disputes and issues are not complicated or where the evidence is primarily documentary in nature. Provided always that in an arbitration where the arbitrator dispenses with oral hearing, the arbitrator shall have the discretion to allow any party to cross-examine another party's witness on the affidavit or statements submitted. And the arbitrator in such direction may limit the scope or issues on which such cross-examination may be allowed.

22.2 Subject to the written agreement of the parties to the contrary, the arbitrator may direct that there shall be oral hearing in an arbitration where the disputes and issues are complicated, or where there are numerous or substantial disputes of facts, or where the evidence is primarily oral in nature or where the arbitrator is of the view that the demeanour of witnesses is important in the arbitration. Provided always that in such a case the arbitrator shall have the discretion to direct that specific disputes or issues in that arbitration be dealt with by way of documentary evidence if the evidence is primarily documentary in nature or if by any other good reason such disputes or issues can be suitably and conveniently dealt with in that manner.

22.3 In an arbitration where there are multiple or numerous disputes or issues of similar type and which, in the opinion of the arbitrator, can be dealt with expeditiously or efficiently through inquisitorial proceedings or by way of modified procedure, the arbitrator may direct that such disputes or issues shall be heard and dealt with through inquisitorial proceedings or by way of modified procedure as the arbitrator may stipulate. Where convenient or expedient the arbitrator may, in the aforesaid direction direct that all the parties relevant witnesses in connection with such disputes or issues shall attend the inquiry or procedure together and shall present their evidence, views and arguments on those disputes or issues in such sequence and manner as the arbitrator may direct.

22.4 The Evidence Act does not apply to arbitration under these Rules, but the grounds for claiming privilege from disclosure as stated in the Evidence Act shall apply to such arbitration. Unless the parties mutually agree in writing to the contrary, the arbitrator may in his discretion direct that certain sections or parts of the Evidence Act shall be adopted and be applied in the arbitration. Nothing contained in this Rule shall prejudice the rights of the parties to the arbitration to agree in writing on the extent of applicability of the Evidence Act to their arbitration proceedings.

22.5 The arbitrator may in his discretion allow opening statements to be made by each party before that party begins his case or defense, as the case may be. The arbitrator may impose guidelines and limits to the duration, length and extent of the opening statements to be made by the parties.

22.6 The sequence, procedure and extent of examination-in-chief, cross-examination and re-examination of witnesses in the oral hearings shall, as a general rule, follow the practice in the High Court. The arbitrator shall have the discretion to make such modifications or adaptations as he may think fit and proper to the sequence procedure and extent of examination of witnesses. In appropriate cases or justifiable circumstances, the cross-examination of a witness need not cover each and every fact or detail or facet thereof in that witness' evidence-in-chief or affidavit or statement, but major facts and matters testified by that witness ought to be cross-examined by the opposite party, if disputed or dissented from.

22.7 Where the practice of the High Court on examination of witnesses in oral hearing is not followed in an arbitration, the arbitration hearing shall be conducted in accordance with rules of natural justice.

22.8 The arbitrator shall have power to administer oaths to or take affirmations of the parties and their witnesses in an arbitration hearing.

23. THE CLOSING SUBMISSIONS

23.1 The arbitrator may decide on the sequence and the timeframe for the parties to make their closing submissions.

23.2 The arbitrator may require the parties to submit their closing submissions in writing.

23.3 The closing submissions of each party shall include the party's submission as to facts and as to laws, and there shall be attached or enclosed therewith copies of the cases and authorities referred to in the closing submissions.

24. THE AWARD

24.1 The arbitrator has the power, either on his own motion or on the application of any party to the arbitration, to make one or more interim awards. If the parties to the arbitration jointly applies to the arbitrator to make an interim award on specific disputes or issues, then the arbitrator shall proceed to conduct hearing on those disputes and issues expeditiously and proceed to make interim awards as requested jointly by the parties. If the arbitrator makes an interim award pursuant to the joint request of the parties, the pendency of any party's challenge of the interim award in the courts is not a ground for postponing or deferring the arbitration proceedings or hearings on the other disputes or issues which have not been decided in the said interim award, unless the parties mutually agree in writing to the contrary or unless the Court orders otherwise.

24.2 All awards shall be reasoned awards and shall be in writing and signed by the arbitrator. The arbitrator shall deliver his award as soon as practicable but not later than three (3) months from his receipt of the last closing submission from the parties. Such time frame for delivery of the award may be extended in writing by mutual agreement of the parties or by the appointing authority. The arbitrator may exercise his lien over the award until the arbitrator's fees, costs and expenses have been fully paid.

24.3 Subject to the Arbitration Act and the law for the time being in force, all awards shall be final and binding on the parties.

24.4 The arbitrator shall have the power to order or award interest on the amounts awarded by him in the award. The rate of interest for the period up to the date of award shall be such rate as the arbitrator thinks fit and proper to compensate the successful party for his actual financing cost during that period or for actual loss of interest income (as the case may be). The interest rate after the date of the award shall be the same rate as that of judgment debt in the High Court.

25. INTERPRETATION OF THE AWARD

25.1 The arbitrator may, on the written application of a party within 21 days of that party's receipt of the award, give an interpretation of his award or part thereof pursuant to such application.

25.2 The interpretation of award shall be given in writing within 21 days of the receipt of the arbitrator of the written application. The interpretation shall form part of the award.

26. CORRECTION OF THE AWARD

26.1 Clerical or typographical errors in the award, or errors in the award arising from any accidental slip or omission, may at any time within one month of the publication of the award, be corrected by the arbitrator with or without an application by any party.

26.2 Within 14 days of the receipt of an award, any party may apply in writing to the arbitrator to correct in the award any errors of computation, any clerical or typo graphical errors. The arbitrator may, within 14 days from the date of receipt of such application, make corrections in the award.

26.3 All corrections to the award shall be in writing and shall form part of the award.

27. ADDITIONAL AWARD

27.1 Where a matter is within the arbitrator's terms of reference in the arbitration but is omitted from the award, any party may, within 14 days from the date of receipt of the award apply in writing to the arbitrator to make an additional award as to that matter. If the arbitrator declines or refuses to make an additional award within 30 days of such written application, the arbitrator shall be deemed to have decided that an award or decision on that matter is not necessary.

27.2 If the application for additional award is made jointly by the parties, the arbitrator shall comply with the request and make an additional award, unless the arbitrator is of the view that an award on decision on that matter is not necessary. If the application for an additional award is made by only a party to the arbitration, the arbitrator shall only make such additional awards if the arbitrator considers it to be just and convenient and that the omission can be rectified without any further hearing or evidence.

27.3 The additional award, if any, shall be made in writing within 30 days from the date of the receipt of the written application. Any additional award shall form part of the award.

28. COSTS

28.1 ARBITRATOR'S COSTS AND EXPENSES

(1) The arbitrators fees shall be in accordance with the Institute's prevailing scale of fees published by the Institute from time to time.

(2) Where the Institute's scale of fees allows a range within which the fees may be charged by the arbitrator, the specific rate of fee for a particular arbitrator within the range shall be fixed by the President as soon as possible at an early stage of the arbitration proceedings, preferably not later than the first preliminary meeting. If the arbitrator or any party to the arbitration disagrees with the rate of arbitrator's fees fixed by the President then that party shall apply in writing to the President of the Institute to revise the rate of arbitrator's fee.

(3) If time cost is used as the basis of arbitrator's fees, then the arbitrator's fees shall be computed on the basis of actual time spent by the arbitrator in studying the issues, research into law, conducting meetings with the parties, conducting hearings, studying exhibits and documentary evidence, preparing and handing down the award

28.1

(4) The Institute imposes an administration and co-ordination levy on the arbitrator's fees in respect of the arbitrators appointed by the President of the Institute and this levy is fixed at 10% of the arbitrator's fees. This levy shall not be added to the cost of the award.

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(5) In addition to the arbitrator's fees all out-of-pocket expenses incurred by the arbitrator are reimbursable by the parties. Out-of-pocket expenses include but are not limited to hiring of the venue, refreshments, telephone and facsimile costs, postage and courier, typing costs, arbitrator's travelling expenses, etc.

(6) If hearings or meetings are conducted away from the arbitrator's home base thereby involving the arbitrator's travelling outstation or overseas, the costs of business class air ticket, outstation travelling, airport charges, taxi fares, food and lodging costs are also chargeable by the arbitrator and shall be reimbursed by the parties. For the actual time spent on travelling for the sole purpose of conducting the arbitration outstation or overseas, the arbitrator in entitled to charge at half his hourly rate or a surcharge as may be allowed under the Institute's scale of fees .

(7) The parties to the arbitration shall be jointly and severally responsible for the arbitrator's fees, costs and expenses.

(8) The arbitrator is entitled to tax and assess his fees, costs and expenses. The Arbitrator shall give a brief statement or breakdown showing his computation of his taxed fees, costs and expenses.

28.2 COSTS OF THE ARBITRATION

(1) The arbitrator has the discretion to direct which party shall bear the costs of the arbitration or any party thereof and also the extent of such responsibility and the arbitrator may also direct as to the manner and procedure for taxation or settlement of the amount of the cost of the arbitration or any part thereof.

(2) In this Rule 28.1 costs of the arbitration includes the arbitrator's fees, costs and expenses as well as the party's fees, costs and expenses (including solicitor's costs and getting-up fees).

(3) In exercising his discretion the arbitrator shall bear in mind the general rule that the costs of arbitration shall follow the event, except when it appears to the arbitrator that in the circumstances of the case it is just and proper to make some other order as to the costs of the arbitration or any part thereof. Provided always that the costs of the arbitration directed in the final award shall not prejudice any earlier direction as to costs made in respect of any interlocutary application or step.

(4) In considering whether or not to direct an order of costs different from the general rule, the arbitrator shall have regard to the following principles:

a) where in any arbitration anything is done or omission is made improperly or unnecessarily by a party, the arbitrator may direct that any costs to that party in respect thereof shall not be allowed to him and that any costs occasioned thereby to other parties shall be paid by him to them;

b) where in an arbitration a party raises multiple issues or matters but succeeds on only part thereof, and the arbitrator is of the view that the party's conduct of the arbitration is not proper or justified, or that the party has unreasonably prolonged the hearing or proceedings, the arbitrator may direct that party to bear the costs in connection with the issues or matters in which the party has failed although that party succeeds in respect of other issues or matters and in doing so, the arbitrator may fix what portion or fraction or percentage of costs of arbitration should be borne by that party.

(5) In accessing the amount of fees for research and getting-up the following circumstances are to be considered:

a) the complexity of the disputes, issues and matters involved in the arbitration;

b) the skill, experience and expertise required of the solicitor or representative;

c) the number and importance of the documents prepared or perused;

d) the importance of the matter to the client;

e) the amount of value of the subject matter or claim;

f) any other relevant circumstances as may be applicable to the arbitration.

29. SUMMARY DISPOSAL OF CLAIMS, COUNTERCLAIMS AND ISSUES

29.1 Where all or any of claims, counter-claims or issues can be fairly and expeditiously dealt with summarily in an arbitration, the arbitrator may, on the written application of any party thereto, deal with the said claims, counter-claims and/or issues summarily in accordance with the following Rules in this Article 29.

29.2 (1) In an arbitration involving pleadings and oral hearing, a party who believes that the opposite party has no defence to his claim or counter-claim or issue raised may apply in writing to the arbitrator for an order for summary judgment on that claim, counter-claim or issue.

(2) On the application of a party, if the arbitrator, after having heard the opposite party, is satisfied that the applicant has a clear and obvious case in his claim or counter-claim or issue and that the opposite party has no defence to that claim or counter-claim or issue, the arbitrator may award summary judgment on that claim or counter-claim or issue in favour of the applicant.

(3) On the other hand if the arbitrator is of the view that the opposite party has an arguable defence or triable issue to that claim or counter-claim or issue, or has an arguable or triable cross-claim of value equal to or exceeding that claim or counter-claim, or that there ought for some other justifiable reasons for ordering a full trial or hearing thereof, the arbitrator shall dismiss the application and shall direct the claim or counter-claim or issue to be dealt with in a full trial or hearing.

(4) If the opposite party has a cross-claim of value less than the value of the proven claim or counter-claim, the arbitrator may award summary judgment for the differential amount and order a full trial or hearing of that claim or counter-claim.

(5) If the arbitrator is of the view that the opposite party's defence, though arguable or triable, is suspect or doubtful, the arbitrator may require the opposite party either to pay into the Institute as stakeholder the amount of the applicant's proven claim or counter-claim pending the outcome of the arbitration after the full trial or hearing or, in lieu thereof, secure the said amount by way of a bank guarantee from a licensed local bank and on terms approved by the arbitrator.

29.3 Where there is a preliminary point of law the decision whereof will wholly or substantially dispose of a claim or counter-claim or issue which is or is likely to be major in terms of value or lengthy in terms of hearing of evidence relevant thereto, a party may apply to the arbitrator for early hearing of that preliminary point of law, and the arbitrator may on such application make an award on that point of law.

29.4 An application under this Article shall state the nature, extent and grounds of the application and shall be supported by an affidavit containing facts and evidence (if any) in support of the application.

29.5 Upon receipt of any application under this Article or upon hearing of such application the arbitrator may refuse to make any order or award on the application or may even refuse to hear any argument on the application if he is of the view that a summary disposal of the subject-matter of the application will not or is unlikely to save time or costs to any significant or material extent in the arbitration. Neither party shall have any right to appeal against or challenge such refusal on the part of the arbitrator, and the parties shall proceed with the arbitration in accordance with the directions of the arbitrator.

30. RESERVATIONS AND SAVING PROVISIONS

30.1 Notwithstanding the provisions of these Rules, the parties to the arbitration may, by agreement to be reduced into writing or by exchange of letters, agree to apply rules of procedure of their mutually agreed choice. In such event the parties shall as soon as possible notify the arbitrator in writing of the party's agreement as to the rules of procedure which the parties have agreed to apply to the arbitration. If there is a lacuna in the party's agreed rules of procedure, then such lacuna shall be filled by the applicable provisions (if any) of these Rules or by such procedural rules as the arbitrator may direct.

30.2 Unless the parties otherwise agree, the arbitrator shall have the power to modify the procedures or steps contained in the provisions of these Rules to suit the justice and convenience of the arbitration or any proceeding therein, provided always that the rules of natural justice shall be complied with.

30.3 Without prejudice to the generality of the provisions in Rules 29.1 and 29.2 the arbitrator may:

(a) dispense with formal pleadings in an arbitration where the issues are not numerous or not complicated or in the opinion of the arbitrator can be fairly and expeditiously dealt with in a hearing without the need for formal pleadings;

(b) direct the parties to prepare a Scotts Schedule, a table or other form of schedules to outline or summarize the claims, issues or matters between the parties;

(c) in an arbitration involving items of disputes or issues of similar type or category, direct the parties to state in a summary form or tabular form their respective views, stance, figures and/or contentions in respect of each and every of those items and also state the basis and reasons for the same;

(d) direct the parties to prepare a list of agreed facts (if possible);

(e) direct the parties to prepare a list of issues or matters in dispute;

(f) in circumstances where it is desirable or expedient for the parties to carry out or prepare joint measurements, observations or records, direct the parties to carry out and prepare joint measurements, observations or records;

(g) direct that the discovery and inspection of documents be dispensed with in an arbitration where the substantial disputes relate to oral evidence and not documentary evidence;

(h) direct that the witnesses' affidavits or statements be dispensed with in an arbitration where the issues are not numerous and the documents involved are not voluminous;

(i) arising from directions to dispense with pleadings, discovery, or witnesses' affidavits or statements as aforesaid the arbitrator may order early dates be fixed for the hearing of the disputes or issues;

(j) in an arbitration involving few issues or documents or which can conveniently be dealt with summarily, direct that the arbitration be dealt with in a summary procedure consistent with the rules of natural justice.

30.4 (1) If an arbitrator's direction, order or interim award -

(a) deals with procedural and/or evidential matters only; or

(b) does not involve any final decision of the arbitrator on any matter or issue on any substantive right or substantive obligation of any party; then none of the parties to the arbitration shall have any right to appeal against or challenge such direction, order or interim award during the pendency of the main award on the substantive rights and obligations of the parties in the arbitration.

(2) If any party is dissatisfied with the arbitrator's direction, order or interim award referred to in sub-rule (1) above, such party may give written notice of dissatisfaction within 21 days of his receipt of the said direction, order or interim award. The written notice of dissatisfaction shall state the nature and extent of and grounds for such dissatisfaction Upon receipt of any such written notice of dissatisfaction, the arbitrator shall include in or incorporate into his main award or final award (as the case may be) the gist or substance of the said direction, order or interim award, and the dissatisfied party may, if he so wishes, challenge the main award or final award (as the case may be) including the said direction, order or interim award.

30.5 Error or mistake of the arbitrator, be it on a point of law or procedure or evidence, does not by itself affect the legality or validity or enforceability of the award unless the said error or mistake -

(a) has occasioned or resulted in any miscarriage of justice; or

(b) has caused any adverse and material effect on any substantive right or substantive obligation of any party to the arbitration.

31. COMPUTATION OF TIME

31.1 Unless the context otherwise requires, "months" and "days" used in these rules refer to calendar months and calendar days respectively.

3.12 Where the last day for the doing of an act or for the taking of a step falls on a public holiday applicable to either party to the arbitration, such last day for the doing of the act or the taking of the step shall be deemed to fall on the next working day immediately after the said public holiday.

31.3 Wherever a period of time is prescribed by any provision of these rules for the doing of an act or the taking of the step, such time period may be extended by mutual agreement of the parties to the arbitration or may be extended by the arbitrator in circumstances as the arbitrator thinks fit and proper. Provided that the arbitrator shall not extend the time for doing an act or taking a step by more than 14 days without the consent of the opposite party unless there is exceptional or extraordinary circumstance justifying further extension.

32. WAIVER

32.1 Wherever a time is prescribed by the provision of these rules for a party to object to or dispute the arbitrator's direction or order, any failure or neglect on the part of the party to raise an objection or dispute to the arbitrator's direction or order within the prescribed time or such extended time (extended pursuant to Rule 31.3 above) shall be deemed to be waiver of any right to object or dispute the arbitrator's direction or order.

32.2 Apart from the provision in Rule 32.1, failure or neglect on the part of any party to object the other party's conduct or proceeding within reasonable time before the conclusion of the hearing (as the case may be) shall, in appropriate circumstances, be construed as waiver of any right to object or dispute thereto.

32.3 A party who is aware that any provision or requirement of these Rules has not been complied with and yet proceeds with the arbitration without promptly stating his objections to such non-compliance shall be deemed to have waived his rights to object to such non-compliance.

33. EXCLUSION OF LIABILITY

33.1 The Institute, the President of the Institute and the arbitrator shall not be liable to any party for any act or omission in respect of or in connection with any arbitration or any proceeding under any arbitration conducted under these rules or in respect of any arbitration conducted by any arbitrator appointed by the President of the Institute. Provided that the arbitrator may be liable for his own fraud or mala fides in the conduct of his arbitration.

33.2 The parties to the arbitration shall not make any claim or proceeding against the Institute, the President of the Institute or any officer or member of the Institute in respect of any matter in connection with the arbitration referred to in Rule 33.1 above.

34. DEFAULT

34.1 If a party to the arbitration refuses, fails or neglects to comply with a direction or order of the arbitrator in respect of any procedural matter, the arbitrator may make a peremptory order directing the defaulting party to comply with the said direction or order within a specified time failing which the arbitrator shall make further directions or orders as may be appropriate or expedient in the circumstances, including drawing adverse inference against the defaulting party, ordering costs against the defaulting party and such other orders as the arbitrator thinks fit and proper.

35. CONFIDENTIALITY

35.1 Subject to Rule 35.2 the evidence and deliberations in the course of the arbitration proceedings and hearings shall remain confidential in perpetuity unless the parties agree otherwise or release the arbitrator from this obligation.

35.2 The contents of the award shall remain confidential for a period of at least five (5) years after the date of the award. After the said period of five (5) years the Institute may publish the contents of the award for reference purpose or for use as a precedent, provided that the names, identities and description of the parties, their witnesses, the contract and project identification shall be deleted from such publication.

36. INTERPRETATION

36.1 Unless the context otherwise requires, words and expressions below shall bear the meanings and/or definitions ascribed thereto respectively below:

"the Institute" means The Malaysian Institute of Arbitrators;

"the President" means the President of the Institute, and in the event of the President is unable or incapable of acting by any reason whatsoever, refers to the Deputy President of the Institute;

"these Rules" means the Rules of Arbitration of the Malaysian Institute of Arbitrators.

36.2 The headings and sub-headings in these Rules are inserted for ease of reference only, and shall not affect the meaning or interpretation of these Rules.

36.3 Any word or expression in these Rules which refers to male gender shall also include the female gender.