

Arbitration Rules May 2009

The Aim

- 1 The aim of every tribunal appointed under these Rules shall be to resolve the dispute fairly, within the shortest time commensurate with the nature of the dispute and the wishes of the parties. To facilitate this aim these Rules (rule 22) empower the parties to request the tribunal to adjourn or stay the proceedings at any time should they wish to consider alternative procedures.

Request for Arbitration

- 2 Where parties to a dispute (other than a dispute to which rule 3 applies) have agreed that it shall be referred to the City Disputes Panel ("the CDP") for arbitration any party may request the CDP to appoint a tribunal under this rule. Where it is desired that the dispute shall be determined within a certain period the request shall so state. The requesting party shall confirm that copies of the request have been served on the other parties.
- 3 Where all the parties to a dispute are agreed that rapid decision is required they may jointly request the CDP to appoint a tribunal, stating that the request is made under this rule and specifying why rapid resolution of the dispute is needed and the date by which a decision is sought.
- 4 A request under rules 2 or 3 above shall be in writing and shall comprise the names, addresses, telephone and fax numbers of the parties, and brief details of the nature of the dispute and the relief claimed.

Commencement of the Arbitration

- 5 An arbitration shall be deemed to commence on the date when the request for arbitration is received by the CDP.

The Arbitral Tribunal

- 6 On receipt of a request for arbitration the CDP will appoint a tribunal from its panel of arbitrators. The tribunal will usually consist of a legally qualified chairman and two experienced service practitioners. However, a sole arbitrator may be appointed if the circumstances of the case so warrant.
- 7 Where the request for arbitration has been made under rule 2, the CDP will appoint a tribunal and notify the parties of its membership within 7 days of the commencement of the arbitration. Where the request has been made under rule 3 the CDP will appoint a tribunal and notify the parties of its membership within the shortest time possible.

Impartiality of Arbitrators

- 8 Before agreeing to be appointed to a tribunal under these Rules each arbitrator shall sign a declaration to the effect that to the best of his knowledge and belief no circumstances exist which might give rise to justified doubts as to his impartiality or independence and if such circumstances arise subsequently the arbitrator concerned shall at once disclose them to the CDP and to the parties.

Completion of the Tribunal's Appointment

- 9 As soon as the CDP has received the declarations required by rule 8 it shall send to the parties for signature an agreement to submit their dispute to arbitration and on receipt from the parties of this agreement the CDP will notify them that the tribunal is duly constituted.

Communications

- 10 The parties shall communicate with the tribunal through the CDP unless the parties, the tribunal and the CDP otherwise agree.

Challenge, Revocation or Cessation of an Arbitrator's Authority

- 11 If, at any time after the tribunal has been duly constituted under rule 9, a party believes that there are justifiable reasons to doubt the impartiality or independence of one or more of its members, or believes that he has some other reasonable ground for objecting to the continued involvement of that member or those members, he shall so inform the CDP within 7 days of becoming aware of such reasons or ground. The member or members thus challenged may thereupon withdraw, and shall do so if another party agrees with the challenge, but if he or they do not the CDP will rule upon the validity of the challenge as soon as possible and in any event within 3 working days. If the CDP accepts the validity of the challenge, the challenged member or members shall withdraw and the CDP will thereupon fill the vacancy or vacancies on the tribunal. Any decision of the CDP under this rule shall be final, subject to rule 12 below.
- 12 The provisions of rule 11 are subject to any statutory rights a party may have to apply to a court to remove an arbitrator.
- 13 The CDP shall have power to revoke the authority of an arbitrator and remove and replace him if justifiable doubts arise as to his impartiality, or he becomes physically or mentally incapable of conducting the proceedings or there are justifiable doubts as to his capacity to do so, or if he has refused or failed properly to conduct the proceedings or to use all reasonable despatch in so doing or in making an award. On the death of an arbitrator his authority ceases and the CDP shall thereupon appoint a successor to him.
- 14 If during the course of the proceedings a member of the tribunal is replaced, no hearing which has already taken place shall be repeated save in so far as the new tribunal considers repetition is necessary.

Jurisdiction of the Tribunal

- 15 The tribunal shall have power to rule on any question regarding its own jurisdiction or the existence or validity of the arbitration agreement, as to whether the tribunal is properly constituted, and as to what matters have been submitted to arbitration in accordance with the agreement. Where the arbitration agreement forms part of a contract it shall be treated as an agreement independent of the contract. A challenge to the tribunal's jurisdiction made at the outset of the proceedings must be raised by a party not later than the time when he takes the first step in the proceedings to contest the merits of the matter in relation to which the challenge arises and a challenge during the proceedings must be made as soon as possible after the matter giving rise to the challenge is raised. The tribunal will rule on the objection in an award as to jurisdiction unless the parties expressly request it to deal with the objection in its award on the merits.

Additional Powers of the Tribunal

- 16 In addition to the powers conferred on the tribunal by any other rule, and unless the parties at any time agree otherwise, the tribunal shall have the power to:
- (a) order the rectification of any mistake which the tribunal determines to be common to the parties in any contract or arbitration agreement;
 - (b) give directions to a party for the preservation for the purposes of the proceedings of any evidence in his custody or control;
 - (c) give directions for the inspection, photographing, preservation, custody or detention by the tribunal, an expert, or a party of any property the subject of the proceedings and which is owned by or in the possession of a party;
 - (d) direct the parties to provide security for the costs of the arbitration in one or more payments and in such proportions as it deems just. This power shall not be exercised on the ground that the party is ordinarily resident outside the United Kingdom or is a corporation or association incorporated or formed under the law of a country outside the United Kingdom, or whose central management or control is outside the United Kingdom. Any sums provided by way of security shall be deposited with the CDP and may be drawn on by the tribunal as required. Any interest earned on deposits will be added to those deposits;
 - (e) direct any party to provide security for any other party's costs of the reference, to the extent permitted by the applicable procedural law.

Duty of the Tribunal

- 17 The tribunal shall adopt procedures appropriate to the case and to the aim of achieving the just, speedy, economical and final resolution of the dispute. To that end it shall act fairly and impartially between the parties, giving each party a reasonable opportunity of presenting his case and dealing with that of his opponent including the opportunity if he so desires of an oral hearing for the presentation of evidence and argument.

Procedural Freedom of the Tribunal

- 18 Subject to the tribunal's duty under rule 17 the parties may agree on the arbitral procedure or any part thereof. When they do not, the tribunal shall determine all procedural matters in its absolute discretion including in particular the admissibility, relevance, materiality and weight of any evidence. In a three-member tribunal the Chairman alone may give directions and make procedural rulings and orders provided he is authorised to do so by the other members.

Duty of the Parties

- 19 It shall be the duty of the parties to do all things necessary for the proper and expeditious conduct of the proceedings. If a Claimant fails to prosecute his claim within the time laid down by the tribunal without showing sufficient cause for such failure, the tribunal may make an award dismissing the claim. If a party fails to participate in the proceedings at any stage without showing sufficient cause, the tribunal may direct that the proceedings shall continue despite his failure and may make an award on the basis of the evidence before it.

First Management Meeting

- 20 This rule shall apply except where the parties have requested rapid decision under rule 3, when rule 21 shall apply. Immediately after the tribunal has been duly constituted each party shall be invited to make written representations regarding appropriate procedures for the future conduct of the arbitration. The tribunal shall then call the parties to a meeting ("the first management meeting") to consider such procedures within 14 days after it has been duly constituted or within such further time as the tribunal shall determine, unless all the parties and the tribunal agree that such a meeting is not required. At this meeting, or following the parties' written representations if no meeting is required, the tribunal may give directions upon the following specific matters and any other matters, including those referred to in rule 22 below, upon which any party may request the tribunal or the tribunal may deem it desirable to give directions:
- (a) the manner in which and the times within which the issues in the arbitration shall be defined;
 - (b) whether a simplified hearing procedure, such as that set out in Appendix I, should be adopted;
 - (c) whether, with the agreement of the parties, the dispute should be determined upon the basis of documents only under the procedure set out in Appendix II;
 - (d) the production of documents;
 - (e) a timetable.

At the first management meeting the tribunal shall also ask the parties whether they wish to exclude any right of appeal.

First Management Meeting (rapid decision)

- 21 Where the parties have requested a rapid decision under rule 3 a first management meeting shall be called immediately after the tribunal has been duly constituted under rule 9 unless all the parties and the tribunal agree that such a meeting is not required. Having considered any representations made by the parties, at the first management meeting or otherwise, the tribunal shall give such directions for the future conduct of the proceedings as may be appropriate to secure the rapid determination of the dispute.

Alternative Resolution Procedures

- 22 The tribunal itself will not employ alternative dispute resolution procedures. However, should the parties at any stage of the proceedings wish to consider the possibility of resolving the dispute, or certain issues, by alternative procedures they may request the tribunal to adjourn or stay the proceedings and to give appropriate directions, if required. The tribunal will enquire at the first management meeting and at any subsequent management meeting whether any possibilities exist for the settlement of the dispute, or of some part of it, and whether the parties wish to consider resolving the dispute, or certain issues, by alternative procedures.

Defining the Issues

- 23 Unless the parties agree or the tribunal directs otherwise, the parties shall set out their cases in writing in accordance with (a) to (d) below:
- (a) within 14 days of the directions referred to in rule 20 the Claimant shall serve a statement setting out the substance of his case and the contentions of law on which he relies and the damages or other relief he claims.
 - (b) within 21 days of receipt of the Claimant's statement the Respondent shall serve a statement setting out the substance of his defence and the contentions of law on which he relies by way of defence to the claim and including any counterclaim.
 - (c) within 21 days of receipt of the statement of the Respondent the Claimant may serve a statement in reply which shall include a defence to counterclaim, if appropriate.
 - (d) all such statements shall be accompanied by copies of the documents upon which the party relies or, if these are numerous, by copies of the principal documents on which he relies together with a list of his further documents. "Documents" includes transcripts of tapes, disks or computer records and any other record which is capable of being printed out or transcribed.

Further Management Meetings

- 24 Whenever subsequently to the first management meeting the tribunal considers it appropriate to do so, the tribunal may invite the parties to make written representations as to the future conduct of the arbitration and the directions to be given and may call a further management meeting to consider such directions.

- 25 At the further management meeting the tribunal will give directions for the further conduct of the arbitration and will consider among other matters:
- (a) whether any matters hitherto at issue may now be agreed;
 - (b) whether any party should give more details of his case on any issue;
 - (c) whether there should be discovery of documents either generally or in relation to any issue;
 - (d) whether there should be a hearing to determine whether any allegation should be struck out as disclosing no reasonable cause of action or defence;
 - (e) whether any issue should be determined by way of interim award;
 - (f) whether an expert or adviser should be appointed to investigate and report to the tribunal on any matter or issue of fact or law.

Witnesses

- 26 The tribunal may require each party to notify the tribunal and the other parties of the identities of all witnesses the party intends to call and may require the parties to exchange signed witnesses' statements and experts' reports before the hearing. A party may request the attendance at the hearing of a witness whose evidence has been submitted in written form and any witness who gives oral evidence may be questioned by or on behalf of the party which calls him and any other party. The testimony of witnesses may be presented in affidavit form, with the leave of the tribunal. Unless the parties agree the contrary, evidence shall not be on oath.

Experts Appointed by the Tribunal

- 27 The tribunal may appoint an expert or experts to report to it on specific issues. The parties shall give such expert any relevant information, document or thing he may require of them. The tribunal shall provide the parties with a copy of any expert's report and of any document referred to therein and shall give the parties an opportunity to comment upon such report and to question the expert thereon.

Hearings

- 28 The tribunal shall fix the date, time and place of any meeting or hearing, of which the parties will be given reasonable notice.
- 29 Hearings shall take place in London or Edinburgh as appropriate unless the parties, with the leave of the tribunal, or the tribunal, choose otherwise. All the parties and their representatives shall be entitled to be present throughout but, save with the consent of the tribunal and the parties, persons not involved in the proceedings shall not be admitted. The proceedings and any award shall remain confidential unless the tribunal, with the consent of the parties, directs otherwise or disclosure is required by law, by a court of competent jurisdiction or by any governmental agency or regulatory authority to which a party making disclosure is subject.

30 Any party may be legally represented or may, with the leave of the tribunal, appear by some other representative.

The Award

31 Unless the parties expressly agree otherwise the tribunal shall make any award in writing and shall state the reasons upon which it is based.

32 Any award or other decision of a tribunal of three may be made by a majority of the members of the tribunal and failing a majority decision on any issue the chairman of the tribunal shall make the award alone, as if he were the sole arbitrator.

33 If any member of the tribunal should fail to join in the making of an award, having been given a reasonable opportunity to do so, the remaining member or members of the tribunal may proceed in his absence.

34 The award shall be made on the date when the CDP sends it to the parties.

35 If at any time the parties settle their differences it shall be their joint and several duty to inform the tribunal immediately in writing. The tribunal shall thereupon be discharged and the reference to arbitration concluded, subject to the payment by the parties of any outstanding fees and costs. However, the tribunal will render an award recording the settlement if requested by any party to do so.

36 The tribunal may add to, vary or amend an award to correct any clerical or arithmetical mistake or error arising from any accidental slip or omission. The tribunal may also add to, vary or amend an award to clarify any aspect of the award or to remove any ambiguity in its wording, provided the parties have been given an opportunity to make representations regarding the proposed addition, variation or amendment and all parties have assented thereto.

37 The tribunal shall decide all matters according to law, unless expressly authorised in writing by the parties to decide in accordance with such other considerations as are agreed by the parties or determined by the tribunal.

Remedies

38 Unless the parties expressly agree otherwise the tribunal may:

- (a) make a declaration as to any matter to be determined in the proceedings;
- (b) order the payment of a sum of money in any currency;
- (c) to the extent permitted by the applicable procedural law, (i) order a party to do or refrain from doing anything, (ii) order specific performance of a contract, (iii) order the rectification, setting aside or cancellation of a deed or other document.

Interest

39 Unless the parties expressly agree otherwise the tribunal may award simple or compound interest from such dates at such rates and with such rests as it considers appropriate:

- (a) on the whole or part of any amount awarded by the tribunal, in respect of any period up to the date of the award;
- (b) on the whole or part of any amount claimed in the arbitration and outstanding at the commencement of the proceedings but paid before the award was made, in respect of any period up to the date of payment;
- (c) from the date of the award until payment on the outstanding amount of any award, including any award of interest under (a) or (b) above and any award as to costs.

Costs

- 40 The tribunal will specify in its award the costs of the arbitration which shall include the fees and expenses of the tribunal and of any experts employed by the tribunal under rule 27 and the registration fees of the CDP.
- 41 The tribunal will direct in its award whether a party shall pay the whole or any part of another party's costs, which may include legal fees and disbursements, experts' fees and disbursements and witnesses' expenses and the tribunal shall determine the amount of the recoverable costs if these are not agreed, unless the parties are agreed that the costs shall be determined in some other way.
- 42 If the arbitration is abandoned, suspended or concluded by agreement or otherwise before an award is made, the parties shall be jointly and severally liable for all the costs of the arbitration as determined by the tribunal.

Exclusion of Liability

- 43 Neither the CDP nor any arbitrator shall be liable for anything done or omitted in purported discharge of its or his functions unless the act or omission is shown to have been in bad faith.

Scotland

- 44 Where the place of arbitration is in Scotland:
- (a) the tribunal may, unless the parties expressly agree otherwise, make an award in respect of delictual damages, if appropriate, and may award interest in respect of the whole or any part of any award for such period prior to the date of the award as it considers just;
 - (b) the parties will not, unless they expressly agree otherwise, apply at any stage to the tribunal to state a case for the opinion of the Court of Session.

Contact:

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Appendix I

The Simplified Hearing Procedure

- 1 Where the tribunal has directed that the simplified hearing procedure shall be followed:
 - (a) the Claimant shall, within such period as the tribunal may direct, formulate his case in writing in sufficient detail to identify the matters in dispute and serve it together with copies of any documents on which he relies upon the Respondent and the members of the tribunal;
 - (b) the Respondent shall, within such period as the tribunal may direct, formulate his defence, and counterclaim if any, in sufficient detail to identify which matters if any in the Claimant's case he accepts and which matters he denies and shall serve it together with copies of any documents on which he relies upon the Respondent and the members of the tribunal; and
 - (c) the tribunal shall give directions as to service of a reply to any counterclaim under paragraph 2 below.
- 2 If any party requires further directions he shall specify his requirements in writing to the tribunal within 7 days of the date for service of the Respondent's defence and after this 7 day period has elapsed the tribunal shall give directions either in writing or at an oral hearing as to the future conduct of the arbitration or, if no further directions are required, shall so state.
- 3 Subject to any directions given under paragraph 2, the tribunal shall, within 21 days of service by the Respondent of his defence, proceed to a hearing of the dispute at which no evidence shall be adduced save for the documents appended to the statements of case and defence, except as the tribunal may otherwise direct or permit.
- 4 The tribunal shall publish its award within 7 days of the hearing.

Appendix II

Decision without a Hearing

- 1 Where parties agree that their dispute shall be decided on the basis of documents only the issues shall be defined in accordance with rule 23, unless the parties agree that they shall be defined in accordance with a different procedure or in some other way.
- 2 The tribunal will thereafter hold a management meeting, unless the parties and the tribunal agree that such a meeting is not required, and will give such directions as may be required, including:
 - (a) directions as to any submissions as to fact and law which the parties may wish to make before the tribunal proceeds to its award;
 - (b) the time within which such submissions are to be made; and
 - (c) the time after the expiry of which the tribunal may make its award.