



## **DOMESTIC COMMERCIAL ARBITRATION**

# **Rules of Procedure**

*(As revised September 15, 2016)*

**THE BRITISH COLUMBIA INTERNATIONAL  
COMMERCIAL ARBITRATION CENTRE**

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## Introduction to the Revised Rules

The Revised Rules embody two fundamental changes from the former Domestic Commercial Arbitration Rules of Procedure (as amended June 1, 1998):

1. An appeal process; and
2. An “application arbitrator” process.

The scope of confidentiality of arbitration proceedings and arising from the production of documents has been clarified in Rule 27.

In addition there have been some minor revisions to clarify or clean up provisions and to re-organize the sections. **Note that under the Rules “day” means a business day and excludes Saturdays, Sundays and statutory holidays.**

The Centre contemplates future additions to the Rules such as:

1. Revised Shorter Rules for expedited arbitrations; and
2. New special Rules for specific types of arbitrations, to be developed in consultation with interested stakeholders.

### Appeal Process

The Rules allow parties to elect to have a right of appeal to an Appeal Tribunal for parties to an arbitration which the Centre administers.

The important points are:

1. Parties to an arbitration must elect in to the appeal process at the commencement of the arbitration.
2. The appeal tribunal is appointed by the Centre through the Application Arbitrator process discussed below not by the parties. The parties have the right to raise objections in respect of conflicts.
3. An appeal may be brought:
  - a. If the arbitration agreement permits an appeal, on the grounds provided in the arbitration agreement, which may include a question of law, a question of mixed fact and law or a question of fact; or
  - b. On a question of law only on leave of the appeal tribunal. (This is the same standard that is currently set out in the *Arbitration Act*<sup>1</sup>).

The *Arbitration Act* has no provision for an arbitral appeal, therefore to ensure the process is valid parties must elect in at the commencement of an arbitration. The benefits of an arbitral appeal are:

1. The process remains private and confidential.

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<sup>1</sup> RSBC 1996, c 55

2. The parties can define the scope of any appeal.
3. The parties have input into the selection of the adjudicators.

To expedite appeals and to deal with creating a panel for an arbitration with more than 2 parties, appointment is by the Centre. Parties will have an opportunity to object on the basis of conflicts.

### **Application Arbitrator Process**

The Rules provide that the “Centre” has certain powers:

1. To change time limits under Rule 3 (3);
2. To appoint an arbitrator Rules 14 (1) and 16; and
3. To hear challenges to an appointment under Rule 17.

The Rules provide that these functions are now carried out by an “Application Arbitrator”. The jurisdiction of an Application Arbitrator is limited to exercising the jurisdiction of the Centre. This process offers the parties a significant advantage in being able to deal with issues privately, more expeditiously and with less expense than the current alternative (filing a petition in Court).

## Model Arbitration Clause

Parties who agree to arbitrate under the Centre's Rules, and to have the Centre act as appointing authority and to provide administrative services, may use the following clause in their agreement:

*All disputes arising out of or in connection with this agreement, or in respect of any legal relationship associated therewith or derived therefrom, shall be referred to and finally resolved by arbitration administered by the British Columbia International Commercial Arbitration Centre pursuant to its Rules.*

*The place of arbitration shall be Vancouver, British Columbia, Canada.*

## Applicability of Rules

Parties should examine the Centre's Rules to ensure that all the provisions are suitable and appropriate in the circumstances. Parties may agree to modify the Rules. Any necessary modifications of the Rules should be added to the model arbitration clause described above.

## The Arbitration Act of British Columbia

S. 22 of the *Arbitration Act*<sup>2</sup> reads:

### International Commercial Arbitration Centre Rules

22. (1) Unless the parties to an arbitration otherwise agree, the rules of the British Columbia International Commercial Arbitration Centre for the conduct of domestic commercial arbitrations apply to that arbitration.

(2) Where the rules referred to in subsection (1) are inconsistent with or contrary to the provisions in an enactment governing an arbitration to which this Act applies, the provisions of that enactment prevail.

(3) Where the rules referred to in subsection (1) are inconsistent with or contrary to this Act, this Act prevails.

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<sup>2</sup> RSBC 1996, c 55

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## **PART 1: GENERAL**

### **1. Interpretation**

- (1) “Rules” means these Domestic Commercial Arbitration Rules of Procedure of the Centre as amended from time to time.
- (2) In these Rules,
  - (a) terms and phrases have the same meanings as defined in or contemplated by the *Arbitration Act*, R.S.B.C., 1996, c.55;
  - (b) except as otherwise defined or contemplated in the *Arbitration Act*, terms and phrases have the same meanings as defined in the *Interpretation Act*, R.S.B.C. 1996, c. 238;
  - (c) “Act” means the *Arbitration Act*, R.S.B.C., 1996, c.55;
  - (d) “Appeal Tribunal” means a tribunal comprised of 3 arbitrators appointed from the Centre’s Panel or pursuant to Rule 43;
  - (e) “Application Arbitrator” means an arbitrator appointed from the Centre’s Panel by the Centre’s Panel Committee to hear an application under these Rules;
  - (f) “Arbitration tribunal” includes a single arbitrator;
  - (g) “Award” includes the reasons for an award, an interim award, a partial award and a direction of an Arbitration tribunal
  - (h) “Centre” means the British Columbia International Commercial Arbitration Centre in Vancouver, British Columbia ;
  - (i) “Centre’s Panel” means a panel of arbitrators appointed by the Panel Committee of the Centre pursuant to Rule 8;
  - (j) “day” means a business day and does not include Saturday, Sunday or a holiday in British Columbia;
  - (k) “document” has an extended meaning and includes a photograph, film, recording of sound, any record of a permanent or semi-permanent character and any information recorded or stored by means of any device, electronic or otherwise;
  - (l) words signifying a male person include a female person; and
  - (m) words in the singular include the plural and words in the plural include the singular.

### **2. Application**

- (1) The Centre shall administer an arbitration if:
  - (a) the parties agree to arbitrate under the Rules of the Centre; or
  - (b) these Rules are deemed to apply by virtue of the provisions of the *Arbitration Act*.
- (2) These Rules do not apply to an international arbitration as defined in the *International Commercial Arbitration Act*, R.S.B.C. 1996, c. 233.

### 3. Time

- (1) In these Rules, where the time for doing an act falls or expires on a Saturday, Sunday or holiday, the time is extended to the next day that is not a Saturday, Sunday or holiday.
- (2) In these Rules, in the calculation of time, the first day shall be excluded and the last day included.
- (3) The Centre may, at any time, extend or abridge a period of time required in these Rules, other than a period of time fixed or determined by an arbitration tribunal.

### 4. Fees

- (1) The commencement fees and administration fees for arbitrations conducted under these Rules are set out in the Centre's *Fee Schedule for Domestic Commercial Arbitration* as amended from time to time.
- (2) The full amount of the commencement fee as set out in the *Fee Schedule for Domestic Commercial Arbitration* shall be paid to the Centre by the party presenting a Notice to Arbitrate or Submission to Arbitration or on the filing of any counter-claim.
- (3) An administration fee shall be paid to the Centre by each party as set out in the *Fee Schedule for Domestic Commercial Arbitration*.
- (4) In addition to the commencement and administration fees, the Centre shall be reimbursed for any expenses that it incurs on behalf of the parties.
- (5) Fees are non-refundable and subject to adjustment by the Centre. The allocation of fees between the parties shall be determined ultimately under Rule 41.
- (6) Where a party does not pay an administration fee or any other outstanding amount, any other party may pay that amount to ensure that the arbitration proceeds.
- (7) An arbitrator or an arbitration tribunal may require the parties to pay a retainer on account of anticipated fees and disbursements which may be held by the Centre or as directed by the arbitrator or arbitration tribunal.

### 5. Modification of Rules

The parties shall notify the Centre of any agreement to modify the Rules upon commencement of the arbitration or as soon as any such agreement is made thereafter.

### 6. Waiver of Rules

A party which knows of a failure to comply with these Rules and which proceeds with the arbitration without promptly stating its objection in writing shall be deemed to have waived the objection. The arbitration tribunal shall determine whether a party has waived an objection.

### 7. Communications

- (1) The Centre and parties to an arbitration under these Rules may deliver any written communications required or permitted under these Rules personally, by mail, by

facsimile, by email or by other means of telecommunication which provide a record of delivery. Communications shall be considered received when delivered to a party's address for delivery.

- (2) Each party to an arbitration shall provide either:
  - (a) an address for delivery within British Columbia or
  - (b) an electronic address for delivery
 in the Notice to Arbitrate or Joint Submission to Arbitrate or, in the case of a Defendant, the Statement of Defence.
- (3) A party may change its address for delivery by giving written notice to the other parties, the Centre, and the arbitration tribunal.
- (4) A copy of all written communications between a party and the arbitration tribunal must be delivered to the other party at the same time.
- (5) Information in regard to the substance of the dispute (i.e., matters other than administrative details) should only be communicated to the arbitration tribunal by a party while in the presence of the other party, or by way of documents where previously agreed to by the parties or as set out in these Rules.

## **8. The Centre's Panel**

- (1) The Panel Committee of the Centre shall appoint no fewer than 12 and no more than 15 arbitrators to the Centre's Panel;
- (2) An arbitrator appointed to the Centre's Panel shall have the qualifications and experience set out in the Centre's Requirements for Panelists.
- (3) An Application Arbitrator shall be appointed from the Centre's Panel as follows:
  - (a) Within 5 days after the filing of an application pursuant to Rule 3, Rule 14 or Rule 16 the Centre's Panel Committee shall advise the parties to the arbitration of the appointment of an Application Arbitrator from the Centre's Panel;
  - (b) Within 2 days of receipt of the name of Application Arbitrator the parties shall advise the Centre's Panel Committee of any objection to the appointment of the Application Arbitrator and the basis of the objection;
  - (c) The Application Arbitrator shall consider such objection and either:
    - (i) Withdraw from the appointment; or
    - (ii) Hold a hearing to consider the objection.
  - (d) If the Application Arbitrator holds a hearing the Application Arbitrator may either withdraw from the appointment or confirm the appointment.
  - (e) If the Application Arbitrator withdraws pursuant to subrules (c)(i) or (c)(ii) the Centre's Panel Committee shall appoint another Application Arbitrator pursuant to subrule (a).
- (4) An Application Arbitrator shall be paid the fee set out in the Centre's *Fee Schedule for Domestic Commercial Arbitration* and may order that the fee or part of the fee be paid by the parties or any of them.

## **PART 2: COMMENCEMENT OF ARBITRATION**

### **9. Arbitration by Agreement**

- (1) Where a dispute falls under an arbitration clause or agreement, a party, as claimant, may submit that dispute to arbitration by giving a written Notice to Arbitrate to the respondent and to the Centre. The Notice to Arbitrate shall contain:
  - (a) the names of the parties to the dispute and counsel, if represented, together with their addresses for delivery;
  - (b) a brief statement of the matter in dispute, and a request that it be referred to arbitration;
  - (c) the remedy sought including, where possible, a precise estimate of the amount claimed;
  - (d) the number and names of arbitrators proposed or agreed upon, if any;
  - (e) the required qualifications of the arbitrators as agreed to by the parties, if any;
  - (f) any modification of these Rules which has been agreed to by the parties; and
  - (g) whether the parties have elected to submit to the appeal process set out in Rules 42 to 44.
- (2) The required commencement fee as set out in the *Fee Schedule for Domestic Commercial Arbitration* must accompany the copy of the Notice to Arbitrate sent to the Centre.
- (3) A copy of the arbitration clause or agreement relied upon and a copy of the applicable contract(s), if any, must be appended to the Notice to Arbitrate.

### **10. Arbitration by Submission**

- (1) Parties to a dispute may submit a dispute to arbitration by filing a Joint Submission to Arbitrate with the Centre. The Joint Submission to Arbitrate shall contain:
  - (a) the names of the parties to the dispute and counsel, if represented, together with their addresses for delivery;
  - (b) a statement of the matter to be arbitrated;
  - (c) the remedy sought and, where possible, a precise estimate of the amounts claimed and counter-claimed;
  - (d) the number and names of arbitrators proposed or agreed upon, if any;
  - (e) the required qualifications of the arbitrators as agreed to by the parties, if any;
  - (f) any modification of these Rules which has been agreed to by the parties; and
  - (g) whether the parties have elected to submit to the appeal process set out in Rules 42 to 44.
- (2) The required commencement fee as set out in the *Fee Schedule for Domestic Commercial Arbitration* must accompany the Joint Submission to Arbitrate.
- (3) The Joint Submission to Arbitrate must be signed by the parties to the dispute and a copy of the applicable contract(s), if any, must be appended.

## **11. Commencement Date**

The arbitration is deemed to have commenced when the Notice to Arbitrate or Joint Submission to Arbitrate has been filed with the Centre and the commencement fee paid. The Centre shall notify the parties when an arbitration has commenced.

## **PART 3: APPOINTMENT OF ARBITRATION TRIBUNAL**

### **12. Interpretation**

The powers of the Centre these Rules shall be exercised by an Application Arbitrator appointed pursuant to Rule 8.

### **13. Number**

Unless the parties have agreed on the number of arbitrators before or within 15 days after the arbitration has commenced, the arbitration shall be before a single arbitrator.

### **14. Appointment of an Arbitration Tribunal**

- (1) Where a single arbitrator is to be appointed, and the parties have not yet agreed upon an arbitrator 21 days after the arbitration has commenced, a party may apply to the Centre to appoint the single arbitrator pursuant to Rule 16.
- (2) Where three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators so appointed shall choose a third arbitrator within 14 days of the date on which the second arbitrator was appointed. The third arbitrator will act as the presiding arbitrator of the tribunal.
- (3) Unless the parties have otherwise agreed, where three arbitrators are to be appointed and one party fails to appoint within the time specified in the agreement or, where no time is specified, within 14 days of receiving notice of appointment of the first arbitrator, the party which appoints the first arbitrator may establish the tribunal in accordance with either Rule 14(4) or 14(5).
- (4)
  - (a) The Centre may appoint the second arbitrator upon the application of either party pursuant to Rule 16.
  - (b) The two appointed arbitrators shall choose a third arbitrator within 14 days of the date on which the second arbitrator was appointed. The third arbitrator shall act as the presiding arbitrator of the tribunal.
  - (c) Where the appointed arbitrators have not agreed upon a presiding arbitrator within 14 days, either party may apply to the Centre to appoint the presiding arbitrator pursuant to Rule 16.
- (5) The party which appointed the first arbitrator may give the party in default of appointment written notice that, if the second arbitrator is not appointed within 14 days of receiving the notice, the first arbitrator shall be the sole arbitrator whose award shall be binding on both parties as if originally appointed sole arbitrator by agreement of the parties.

- (6) Anyone who appoints an arbitrator shall immediately notify the Centre, in writing, of the appointment.
- (7) The parties may agree to request that the Centre appoint an arbitrator at any time pursuant to Rule 16.
- (8) If a claimant fails to take steps to appoint an arbitration tribunal within a reasonable time a respondent may apply to an Application Arbitrator to have the arbitration dismissed.

## **15. Independence and Impartiality**

- (1) An arbitrator shall be and remain at all times wholly independent and impartial.
- (2) Every person must, upon accepting an appointment as arbitrator, sign a statement declaring that he or she knows of no circumstance likely to give rise to justifiable doubts as to his or her independence or impartiality and that he or she will disclose any such circumstance to the parties should such arise after that time and before the arbitration is concluded. A copy of the statement shall be filed with the Centre and a copy provided to all parties.

## **16. Method of Appointment**

- (1) A party applying to the Centre to appoint an arbitrator shall provide the Centre with names previously considered by the parties to the arbitration.
- (2) Where an application is made to the Centre to appoint a sole or presiding arbitrator, it shall use the following procedure unless it determines the procedure to be inappropriate.
  - (a) The Centre shall deliver to each party an identical list of at least 4 names of proposed arbitrators, together with a brief description of each proposed arbitrator.
  - (b) Within 10 days of the listing each party shall advise the Centre as to its order of preference of the proposed names and any name to which it objects.
  - (c) Taking into consideration the responses of the parties, the Centre may appoint an arbitrator from among the names on the list, or deliver to each party a second list of at least 4 other names.
  - (d) In the event the Centre delivers a second list of names to the parties, each party shall respond with its preferences and objections within 10 days.
  - (e) The Centre will appoint an arbitrator within 14 days of communicating the second list.
- (3) A party seeking more information about a proposed arbitrator shall not communicate directly with the proposed arbitrator. On request, the Centre will endeavour to provide more information about a proposed arbitrator.
- (4) When appointing an arbitrator, the Centre shall observe the qualifications agreed to by the parties, if any, and have regard to:
  - (a) the lists of proposed arbitrators submitted to the parties;
  - (b) the objections and preferences expressed by the parties in the appointment procedure, as well as any additional qualifications requested by a party;
  - (c) the nature of the contract;

- (d) the nature and circumstances of the dispute; and
- (e) any other consideration likely to secure the appointment of a qualified, independent and impartial arbitrator.

## **PART 4: CHALLENGES TO AN ARBITRATOR**

### **17. Challenges**

- (1) A party may challenge any arbitrator where circumstances exist that give rise to a justifiable doubt as to his or her independence or impartiality, or whether he or she possesses the qualifications specifically agreed to by the parties.
- (2) A party who intends to challenge an arbitrator shall, no later than 14 days after the appointment of that arbitrator or 14 days after the circumstances giving rise to the challenge became known to that party, send a written statement of challenge to the arbitration tribunal and to the Centre. The statement of challenge shall set out detailed reasons for the challenge.
- (3) If the challenged arbitrator agrees to withdraw or all other parties to the arbitration agree to the challenge, the challenged arbitrator shall withdraw from the arbitration. In neither case shall the validity of the grounds for challenge be implied.
- (4) Where the challenged arbitrator does not withdraw pursuant to subrule (3):
  - (a) where there is a single arbitrator, that arbitrator shall decide on the challenge;
  - (b) in the case of a three person tribunal where the presiding arbitrator is not challenged, the presiding arbitrator shall decide the challenge;
  - (c) where the presiding arbitrator is the challenged arbitrator, all of the arbitrators shall decide the challenge.
- (5) A party may appeal an arbitration tribunal's decision under subrule (4) to the Centre within 7 days.
- (6) An Appeal Tribunal appointed by the Centre pursuant to Rule 43 shall decide the appeal from the arbitration tribunal's decision under subrule (4) as soon as is reasonably possible after receiving the appeal and according to such procedures as the Appeal Tribunal considers appropriate. The decision of the Appeal Tribunal on this appeal shall be final and conclusive.

### **18. Substitution**

- (1) The Centre may declare the office of arbitrator to be vacant if, on the basis of evidence thought satisfactory by the Centre, it concludes that an arbitrator is unable to perform the duties of the office. A substitute arbitrator shall be appointed pursuant to Rule 14.
- (2) Where a member of an arbitration tribunal is replaced, any hearings previously held may be repeated at the discretion of the tribunal. Where a single arbitrator is replaced, any hearing previously held shall be repeated.

## **PART 5: CONDUCT OF THE PROCEEDING**

### **19. Place of Arbitration**

- (1) The place of arbitration shall be Vancouver, British Columbia, unless otherwise agreed by the parties.
- (2) The arbitration tribunal may meet at any other place it considers necessary for any purpose, including deliberation, to hear witnesses, experts or the parties, or for the inspection of documents, premises, goods or other property.

### **20. Pre-hearing Meeting**

- (1) The arbitration tribunal shall convene a pre-hearing meeting within 21 days of appointment.
- (2) The pre-hearing meeting agenda may include:
  - (a) identification of the issues in dispute,
  - (b) procedure to be followed,
  - (c) fees, costs and deposits,
  - (d) time periods for steps to deal with any other matters that will assist the parties to settle their differences or to assist the arbitration to proceed in an efficient and expeditious manner; and
  - (e) the availability of mediation through the Centre to assist in settlement of the dispute.
- (3) The pre-hearing meeting may take place by conference telephone call.
- (4) The arbitration tribunal shall record any agreements or orders made at the pre-hearing meeting and shall, within 7 days of that meeting send a copy of that document to each of the parties and the Centre.

### **21. Conduct of the Arbitration**

- (1) Subject to these Rules, the arbitration tribunal may conduct the arbitration in the manner it considers appropriate but each party shall be treated fairly and shall be given full opportunity to present its case.
- (2) The arbitration tribunal shall strive to achieve a just, speedy and economical determination of the proceeding on its merits.

### **22. Jurisdiction**

- (1) The arbitration tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement
- (2) A decision by the arbitration tribunal that the contract is null and void shall not entail the invalidity of the arbitration clause unless specifically found to be so by the arbitration tribunal
- (3) Any objection to the jurisdiction of the arbitration tribunal to consider a claim or counter-claim shall be raised in the statement of defence or statement of defence to

counter-claim. The tribunal may consider a late objection if it regards the delay justified.

- (4) A party is not precluded from raising a jurisdictional plea by the fact that it has appointed or participated in the appointment of an arbitrator.

### **23. Exchange of Statements**

- (1) Within 21 days of the commencement of the arbitration, the claimant shall deliver a written statement to the respondent, the Centre, and the arbitration tribunal, if appointed. The statement should include:
- (a) a description of all matters and amounts being claimed;
  - (b) the facts supporting the claim(s) made;
  - (c) the issues to be determined;
  - (d) the relief or remedy sought.
- (2) Within 15 days of receipt of the claimant's statement, the respondent shall deliver a written statement of defence.
- (3) At the time a respondent submits its statement of defence, it may make counterclaims or assert a set-off.
- (4) The claimant has 15 days from receipt of the respondent's counterclaim to deliver a written reply.
- (5) Subject to the direction of the arbitration tribunal, each party shall deliver the documents upon which it intends to rely with each of the above statements.

### **24. Amendment of or Supplement to Claim**

The arbitration tribunal may allow a party to amend or supplement its claim or counterclaim or defence during the course of the arbitration, unless the arbitration tribunal considers the delay in amending or supplementing the claim to be prejudicial to another party or considers that the amendment or supplement goes beyond the terms of the arbitration agreement.

### **25. Production of Documents**

The arbitration tribunal may order a party to produce any particular document or class of documents it considers relevant within a time it specifies. Where such an order is made the other party may inspect those documents and take copies of them.

### **26. Agreed Statement of Facts**

The parties shall, within a period of time specified by the arbitration tribunal, identify those facts which are not in dispute and submit to the tribunal an agreed statement of facts.

### **27. Confidentiality**

- (1) Unless:
- (a) otherwise agreed by the parties,
  - (b) required by law, or

(c) necessary to enforce or challenge an award, all hearings, meetings, evidence, documents (produced or exchanged), Awards and communications shall be private and confidential as between the parties, the arbitration tribunal and the Centre.

- (2) A party to an arbitration may disclose an Award to its professional advisers, insurers or other persons with a legal interest in the outcome of the arbitration provided that such disclosure is made on the basis that the recipient will keep the Award confidential unless required to be disclosed by law.

## **28. Hearings and Evidence**

- (1) The arbitration tribunal shall, in consultation with the parties, set the dates for the hearings.
- (2) Each party shall prove the facts on which it relies.
- (3) In deciding issues of relevance and materiality of evidence, the arbitration tribunal shall not be required to apply the rules of evidence.
- (4) The arbitration tribunal may direct the order of proceeding, divide the proceedings into stages, exclude repetitive or irrelevant testimony, limit or refuse to receive the evidence of a witness of fact or opinion, or direct the parties to address specific issues the determination of which may dispose of some or all of the dispute.
- (5) Subject to the direction of the arbitration tribunal,
- (a) the evidence of every witness shall be presented in written form;
  - (b) the written statement of each witness shall be signed by the witness and, if the tribunal so directs, duly sworn or declared;
  - (c) the parties shall exchange statements of witnesses no less than 10 days before the hearing, if any;
  - (d) a witness shall attend the hearing for oral examination if requested to do so not less than 2 days before the hearing, or by telephone, videoconference or other electronic media if directed by the arbitration tribunal;
  - (e) if a witness is requested but fails to attend the hearing, the tribunal may refuse to receive the written statement as evidence or place such weight on the evidence as it considers appropriate; and
  - (f) subject to sub-rules 4 and 5 (e), each statement shall be received as the direct examination of the witness.
- (6) The arbitration tribunal, on such terms as are necessary to prevent prejudice, may allow a party to introduce into evidence a document not disclosed under Rule 23(5), or introduce oral evidence of a witness not disclosed under this Rule.

## **29. Experts**

- (1) An expert's report shall include a statement of the expert's opinion, the facts upon which the opinion is based, and a description of the qualifications of the expert.
- (2) Subject to the direction of the arbitration tribunal:
- (a) A party intending to rely on the opinion of an expert shall deliver a copy of the expert's report to each party and the tribunal no less than 15 days before the hearing.

- (b) A party which objects to the admissibility of all or any part of a report shall notify the party relying on the report no less than 7 days before the hearing.
  - (c) An expert whose report has been delivered under sub-rule 1 shall attend the hearing for oral examination, if requested no less than 7 days before the hearing.
- (3) The arbitration tribunal may direct the parties' experts to meet and to prepare a joint report identifying those matters which are not in dispute and those which are in dispute.
- (4) The arbitration tribunal may appoint one or more experts to report on specific issues and may direct a party to give an expert any relevant information or to provide access to any relevant documents, goods or property in its control or possession for inspection, subject to the following:
- (a) The tribunal shall first notify the parties of its intention, and invite the parties' submissions in respect of the proposed terms of reference and identity of the expert.
  - (b) The tribunal shall deliver a copy of the expert's report to each party and give each party the opportunity to challenge all or any part of the report in a manner determined by the tribunal.
  - (c) At the request of a party, the expert shall make available for examination all documents, working papers, goods or other property in the expert's possession which the expert used in the preparation of the report.

### **30. Default of a Party**

- (1) If the claimant is properly notified but fails to attend the hearing, the arbitration tribunal may proceed to render a final award with or without a hearing.
- (2) If the respondent fails to deliver its statement of defence or is properly notified but fails to attend the hearing, the arbitration tribunal may proceed with the hearing. The final award shall be made on the basis of the evidence received.
- (3) If the claimant fails to comply with a requirement under these Rules or fails to comply with an order of the arbitration tribunal, the tribunal may issue an order for the termination of the arbitration. The tribunal must provide the claimant with not less than 14 days' notice of its intention to terminate the arbitration and determine that the claimant has not provided sufficient cause for being in breach of the Rules or the order of the tribunal.

### **31. General Powers of the Arbitration Tribunal**

- (1) Without limiting the generality of Rule 21 or any other Rule which confers jurisdiction or powers on the arbitration tribunal, and unless the parties at any time agree otherwise, the tribunal may:
  - (a) order an adjournment of the proceedings from time to time;
  - (b) make a partial award;
  - (c) make an interim order or award on any matter with respect to which it may make a final award, including an order for costs, or any order for the

- protection or preservation of property that is the subject matter of the dispute;
- (d) order inspection of documents, exhibits or other property, including a view or physical inspection of property;
  - (e) order the recording of any oral hearing;
  - (f) at any time extend or abridge a period of time fixed or determined by it, or any period of time required in these Rules;
  - (g) empower one member of the arbitration tribunal to make interim and other orders, including settling of matters at the pre-hearing meeting, that do not deal with the issues in dispute;
  - (h) order any party to provide security for the legal or other costs of any other party by way of a deposit or bank guarantee or in any other manner the arbitration tribunal thinks fit;
  - (i) order any party to provide security for all or part of any amount in dispute in the arbitration;
  - (j) order that any party or witness shall be examined on oath or affirmation, and may for that purpose administer any necessary oath or take any necessary affirmation;
  - (k) make an award ordering specific performance, rectification, injunctions and other equitable remedies;
  - (l) make a final order in the event of the default of a party to the arbitration in complying with a direction of the arbitration tribunal or a Rule.

### **32. Settlement Offers**

- (1) A party making a formal, written offer to settle shall deliver a copy to the Centre.
- (2) If the offer is not accepted, and subject to its terms, the Centre shall hold the offer without disclosing its terms to the arbitration tribunal until after the arbitration tribunal has decided the substantive issues in dispute.
- (3) The Centre shall provide the arbitration tribunal with a copy of the offer before the tribunal decides issues of cost.

### **33. Deposits Against Costs**

- (1) The arbitration tribunal may, from time to time, require each party to deposit with the Centre in trust an equal amount as an advance for the anticipated costs of the arbitration including the tribunal's fees.
- (2) If the required deposits are not made within 15 days after receipt of the request from the arbitration tribunal, the tribunal and/or the Centre shall inform the parties in order that another party may make the required payment.
- (3) If the required deposits are not made, the arbitration tribunal may order the suspension or termination of the proceeding.

### **34. Payment out of Deposits**

- (1) The Centre may, from time to time, pay to the arbitration tribunal from any deposit it holds under Rule 33, a reasonable and appropriate amount for fees earned or expenses incurred.
- (2) After the final award has been made, the claim has been withdrawn, a settlement has been reached or the arbitration has been abandoned, the Centre shall apply any deposits it holds to the costs of the arbitration, including any arbitration tribunal fees and disbursements, as well as administrative fees and expenses. The Centre will render an accounting to the parties and return any unexpended balance.

## **PART 6: AWARD**

### **35. Legal Principles Apply**

An arbitration tribunal shall decide the dispute in accordance with the law unless the parties agree in writing in accordance with section 23 of the Act that the matter in dispute may be decided on equitable grounds, grounds of conscience or some other basis.

### **36. Closure of Hearings and Termination of the Proceedings**

- (1) Having received the evidence and the final submissions of the parties, the arbitration tribunal shall close the hearing.
- (2) After the hearings have been closed, the arbitration tribunal may, in exceptional circumstances, re-open the hearings at any time before the final award.
- (3) The arbitration tribunal may order the termination of the arbitration where it finds that the proceedings have become unnecessary or impossible.

### **37. Settlement**

- (1) The arbitration tribunal may encourage settlement of the dispute and, with the written agreement of the parties, may conduct mediation, conciliation, facilitation or other appropriate procedure(s).
- (2) If the parties settle the dispute during the arbitration proceedings, the arbitration tribunal shall terminate the proceedings and, if requested by the parties and acceptable to the tribunal, record the settlement in the form of an arbitration award.

### **38. Arbitral Award**

- (1) Pursuant to Section 12 of the Act, where the arbitration tribunal consists of three or more arbitrators, an award shall be made by a majority of the tribunal. Where there is no majority decision, the decision of the chair of the arbitration tribunal shall be the award.
- (2) The arbitration tribunal may make a partial award.
- (3) The arbitration tribunal may make an interim order that shall be merged or addressed in the award when all issues, including costs, have been determined.

- (4) The arbitration tribunal shall make its final award within 60 days after the hearings have been closed unless the parties otherwise agree.
- (5) An award shall be in writing and include the reasons. The arbitration tribunal shall file a copy of each award with the Centre.
- (6) The date of an Award shall be the date it is delivered to the parties.
- (7) The Centre may withhold publication of an award to the parties on the basis of outstanding fees.

### **39. Interest**

On the basis of evidence presented, the arbitration tribunal may order simple or compound interest to be paid in an award.

### **40. Amendments and Corrections to the Award**

- (1) On the application of a party or on the arbitrator's own initiative, an arbitrator may amend an award to correct:
  - (a) a clerical or typographical error,
  - (b) an accidental error, slip, omission or other similar mistake, or
  - (c) an arithmetical error made in a computation.
- (2) An application by a party under subrule (1) must be made within 15 days after the party is notified of the award.
- (3) An amendment under subrule (1) must not, without the consent of all parties, be made more than 30 days after all parties have been notified of the award.
- (4) Within 15 days after being notified of the award, a party may apply to the arbitrator for clarification of the award.
- (5) On an application under subrule (4), the arbitrator may amend the award if the arbitrator considers that the amendment will clarify it.
- (6) Within 30 days after receiving the award, a party may apply to the arbitrator to make an additional award with respect to claims presented in the proceedings but omitted from the award, unless otherwise agreed by the parties.

## **PART 7: COSTS**

### **41. Costs**

- (1) The arbitration tribunal shall determine liability for costs and may apportion costs between the parties.
- (2) In awarding costs, the arbitration tribunal shall take into account the principles set out in Rule 21(2), and the failure of any party to comply with these Rules or the orders of the tribunal. The tribunal shall provide reasons in the event it departs from the principle that costs follow the event.
- (3) In the event the arbitration tribunal awards costs, it shall specify the amounts of the fees and expenses so awarded or the method for the determination of those amounts.
- (4) Costs include:

- (a) the fees of the arbitration tribunal which shall be separately determined and stated for each member of the tribunal, together with reasonable travel and other expenses incurred by the tribunal;
  - (b) the fees of any expert appointed by the arbitration tribunal, including travel and other reasonable expenses incurred;
  - (c) the legal and other expenses reasonably incurred in relation to the arbitration by a party determined by the arbitration tribunal to be entitled to recover such costs; and
  - (d) the commencement fee, administration fees, and the expenses incurred by the Centre.
- (5) The parties are jointly and severally liable to pay the Centre's fees and the tribunal's fees and expenses.

## **PART 8: APPEALS**

### **42. Bringing an Appeal**

- (1) A party to an arbitration, other than an arbitration in respect of a family law dispute, may appeal to an Appeal Tribunal on any question of law arising out of the award if:
  - (a) all of the parties to the arbitration consent, or
  - (b) the arbitration agreement provides that either party may appeal; or
  - (c) the Appeal Tribunal grants leave to appeal.
- (2) An appeal shall be brought by filing a Notice of Appeal with the Centre within 30 days of the date of any Award made pursuant to Rule 38.
- (3) Notwithstanding subrule (1) if the parties have agreed in an arbitration agreement that an appeal may be brought on questions of mixed law and fact or fact or on specified grounds the Appeal Tribunal shall hear the appeal on those specified grounds.
- (4) The required appeal commencement fee as set out in the *Fee Schedule for Domestic Commercial Arbitration* must accompany the copy of the Notice of Appeal sent to the Centre.
- (5) The Notice of Appeal shall set out the grounds of appeal and shall have attached a copy of the Award which is the subject of the Notice of Appeal.
- (6) An Appeal Tribunal shall be appointed in accordance with Rule 43.
- (7) In an application for leave under subrule (1)(b), the Appeal Tribunal may grant leave if it determines that
  - (a) the importance of the result of the arbitration to the parties justifies the intervention of the Appeal Tribunal and the determination of the point of law may prevent a miscarriage of justice, or
  - (b) the point of law is of importance to some class or body of persons of which the applicant is a member.
- (8) If the Appeal Tribunal grants leave to appeal under subrule (2), it may attach conditions to the order granting leave that it considers just.

#### 43. **Appointment of an Appeal Tribunal**

- (1) On the filing of a Notice of Appeal and payment of the appeal commencement fee the Centre shall, within 5 days, deliver to each party a list of those members of the Centre's Panel who are available to hear an appeal.
- (2) Each of the parties to an appeal shall, within 5 days, advise the Centre in writing of any circumstances that exist that give rise to a justifiable doubt as to the independence or impartiality on the part of any of the members of the Centre's Panel.
- (3) Each of the parties to an appeal may, within 5 days, advise the Centre in writing of the order of preference for the appointment of members of the Appeal Tribunal from the list delivered under subrule (1).
- (4) If any party to an appeal fails to advise the Centre in writing within the time limit set out in subrule (2) they shall be deemed to have accepted the eligibility of each member of the list sent under subrule (1).
- (5) The Centre shall within 10 days of the delivery of the list sent under subrule (1) appoint an Appeal Tribunal having due regard to any submission sent by any party under subrules (2) and (3). If the Centre determines that an insufficient number of members of the Centre's Panel are available for appointment the Centre may send a further list pursuant to subrule (1) and may include candidates other than members of the Centre's Panel.
- (6) The members of an Appeal Tribunal shall be paid the fee set out in the Centre's *Fee Schedule for Domestic Commercial Arbitration* and may order that the fee or part of the fee be paid by the parties or any of them or that security be paid to the Centre in respect of such fee.

#### 44. **Procedure on an Appeal**

- (1) The Appeal Tribunal shall convene a pre-hearing conference within 10 days of the appointment of the Appeal Tribunal to set a schedule for:
  - (a) the filing of evidence for the hearing;
  - (b) the exchange of written arguments for the hearing of the appeal;
  - (c) the hearing of the appeal; and
  - (d) the payment of security for the fees and disbursements of the Appeal Tribunal.
- (2) The hearing of the appeal will be conducted in accordance with the directions of the Appeal Tribunal.

#### 45. **Powers of the Appeal Tribunal**

- (1) On an appeal an Appeal Tribunal may
  - (a) confirm, amend or set aside the award, or
  - (b) remit the award to the arbitrator together with the Appeal Tribunal's opinion on the question of law that was the subject of the appeal.
- (2) An Appeal Tribunal may dismiss an appeal without a hearing if:
  - (a) the parties to the arbitration consent in writing; or
  - (b) the appellant has failed to comply with the directions of the Appeal Tribunal.

- (3) An Appeal Tribunal may make an award of costs in accordance with Rule 41.
- (4) An Appeal Tribunal may amend or correct an award pursuant to Rule 40.

END OF RULES