

THE SCOTTISH

# ARBITRATION CODE

2007

(ALSO KNOWN AS THE SCOTTISH ARBITRATION RULES 2007)

PREPARED BY THE CHARTERED INSTITUTE OF ARBITRATORS (SCOTTISH BRANCH)



Scottish  
Branch

**CIArb**

## **Foreword**

It is with great pleasure that I write this foreword to the 2007 Edition of the Scottish Arbitration Code (also known, for historical reasons, as the Scottish Arbitration Rules). Of all of our achievements in the Scottish Branch this I believe is one of our most significant to date.

I wish to thank the committee members on our Working Group who produced the first draft of the Arbitration Code, and the many people in our country who took part in the consultation process, and in particular my colleagues Ian Strathdee and Jonathan Broome who have taken responsibility for the drafting and production of the final document.

Jonathan Broome in particular has worked tirelessly on this document, and is to be commended for his unstinting attention to detail, and patience in absorbing the views of so many interested parties.

The Scottish Branch is proud of its achievement in publishing the Scottish Arbitration Code for use throughout the ADR process in our country.

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Chairman  
Chartered Institute of Arbitrators (Scottish Branch)

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## **Commencement of the Arbitration**

## **article 1**

- 1.1** The party commencing arbitration (the Claimant) shall give to the other party (the Respondent) a Notice of Arbitration. Arbitral proceedings shall be deemed to commence on the date on which the Notice of Arbitration is received by the Respondent. In this Code, in respect of the use of the words "Claimant", "Respondent" and "party", words in the singular include the plural unless the context dictates otherwise.
- 1.2** The Notice of Arbitration shall include the following:
  - 1.2.1** The full names and addresses of the parties (including telephone, facsimile numbers and e-mail addresses if known).
  - 1.2.2** A reference to the arbitration clause or the separate arbitration agreement that is involved.
  - 1.2.3** A full statement of the Claimant's claim, including the nature of the claim, a statement of the relevant facts and of the applicable law on which the Claimant relies and a statement of the relief or remedy sought including details of the sum or sums claimed and how they are made up. The claim shall be accompanied by copies of, or relevant extracts from, the contract and such other documents (including a full copy of any expert report(s)) as the Claimant intends to rely upon and shall detail the relevant parts of the contract, and the relevant parts of any such other documents, as are particularly relied upon by the Claimant.
  - 1.2.4** A demand that the matter be referred to arbitration.
  - 1.2.5** A proposal by the Claimant of the name of an Arbitrator with his full name and address (and his telephone and facsimile numbers and e-mail address if known).
- 1.3** The Respondent shall, within seven days after receipt of the Notice of Arbitration, intimate whether or not he accepts the Arbitrator proposed by the Claimant and, if he does not accept him, intimate to the Claimant the name and address (and telephone, facsimile number and email address if known) of the Arbitrator whom the Respondent proposes.
- 1.4** Within twenty one days after receipt of the Notice of Arbitration (and irrespective of whether or not an Arbitrator has by then been appointed) the Respondent shall deliver to the Claimant a Notice of Defence. Failure to deliver a Notice of Defence shall not delay the arbitration. If there is such a failure all claims set forth in the Notice of Arbitration shall be deemed to be denied.
- 1.5** The Arbitrator shall be appointed, subject always to the terms of Articles 3 and 4, as follows:

- 1.5.1** All references to an Arbitrator shall include the masculine and the feminine, and Arbitrator shall include Arbitrer.
- 1.5.2** A single Arbitrator shall be appointed.
- 1.5.3** If the Claimant has proposed an Arbitrator under Article 1.2.5, and the Respondent does not intimate non-acceptance of that Arbitrator within seven days after receipt of the Notice of Arbitration, then the Arbitrator proposed by the Claimant shall be deemed appointed as the Arbitrator upon the expiry of the foregoing seven day period.
- 1.5.4** Where the Respondent has indicated, pursuant to Article 1.3, that the Respondent does not accept the Arbitrator proposed by the Claimant, the parties shall endeavour to agree on the Arbitrator within seven days of intimation of the name of the Respondent's proposed Arbitrator under Article 1.3. If they do so agree then the Arbitrator shall be deemed appointed on the date of such agreement being reached.
- 1.5.5** If they cannot agree within that period either party may apply to the Chairman of the Chartered Institute of Arbitrators (Scottish Branch) to appoint the Arbitrator within seven days of the application and the Arbitrator shall be deemed appointed on the date of the Arbitrator's appointment by the relevant officer of the Chartered Institute of Arbitrators (Scottish Branch).
- 1.5.6** Where application has been made to the Chairman of the Chartered Institute of Arbitrators (Scottish Branch) to appoint an Arbitrator and the relevant officer of the Chartered Institute of Arbitrators (Scottish Branch) refuses or fails to make an appointment within seven days of the application, either party may apply to the Court of Session, Scotland to appoint the Arbitrator. In the event of appointment of the Arbitrator by the Court of Session the Arbitrator shall be deemed appointed on the date of appointment by the Court of Session.
- 1.5.7** Where the Chairman of the Chartered Institute of Arbitrators (Scottish Branch) is unavailable or unable to act, a Vice-Chairman or the Secretary may act in his place.
- 1.5.8** For the purposes of this Article the parties prorogate the exclusive jurisdiction of the Court of Session, Scotland.
- 1.6** The Notice of Defence shall include:-
- 1.6.1** Any comment on such content of the Notice of Arbitration as relates to Articles 1.2.1, 1.2.2 or 1.2.3 that the Respondent considers appropriate.
- 1.6.2** A full statement of the Respondent's defence, including a statement of the relevant facts and of the applicable law (if any) on which the

Respondent relies in its defence and a statement of the relief requested. The defence shall be accompanied by copies of, or relevant extracts from, the contract and such other documents (including a full copy of any expert report(s)) as the Respondent intends to rely upon, except where such copies or extracts have already been provided by the Claimant under Article 1.2.3, in which event the Respondent shall state its position regarding the terms of such copies or extracts.

- 1.7** The Respondent may include in the Notice of Defence any counterclaim within the scope of the arbitration clause or agreement and such counterclaim shall become part of the arbitration. If so, the counterclaim in the Notice of Defence shall include those matters in Articles 1.2.1, 1.2.2, 1.2.3 and 1.2.4.
- 1.8** If a counterclaim is asserted in the Notice of Defence, within twenty one days after its receipt, the Claimant shall deliver to the Respondent a reply to the counterclaim which shall include the same matters as provided for in the Notice of Defence in Article 1.5.
- 1.9** Failure by the Respondent to include a counterclaim in the Notice of Defence shall not preclude the Respondent from making a counterclaim, within the scope of the arbitration clause or agreement, no later than seven days after the later of the Notice of Defence or the appointment of the Arbitrator (in terms of Article 3) if, on cause shown, the Arbitrator, in the Arbitrator's absolute discretion, is prepared to permit it, in which event it shall become part of the arbitration.
- 1.10** If any party has been served with a Notice of Arbitration that party may, at any time before the Arbitrator has been appointed, give Notice of Arbitration in respect of any other disputes which fall under the same arbitration agreement. All disputes identified in such Notice of Arbitration shall be consolidated within the same arbitral proceedings.
- 1.11** After an Arbitrator has been appointed, either party may give a further Notice of Arbitration to the other, and to the Arbitrator, referring any additional dispute which falls under the same arbitration agreement to the Arbitrator and, whether or not the other party consents to that other dispute being referred to the Arbitrator, the Arbitrator may in the Arbitrator's absolute discretion order that the additional dispute should be referred to and consolidated within those same proceedings or that it should not be so referred and consolidated.
- 1.12** Immediately following the appointment of an Arbitrator (in terms of Article 1.5) the Claimant shall send to the Arbitrator a copy of all Notices of Arbitration in the arbitration and a copy of all replies to any counterclaims in any Notices of Defence in the arbitration. The Respondent shall send to the Arbitrator a copy of all Notices of

Defence (including any counterclaims contained therein) in the arbitration. At the same time each party shall send to the Arbitrator copies of, or relevant extracts from, the contract and such other documents as the party intends to rely upon (except in so far as such action is made unnecessary for the Respondent by Article 1.6.2).

## **Notices and Communications**

### **article 2**

- 2.1** All notices or other communications between the parties and the Arbitrator shall be in writing and may be delivered by courier or by registered/recorded post, or transmitted by facsimile, e-mail or any other means of telecommunication which provides a record of its transmission.
- 2.2** A party's last known residence or place of business during the arbitration shall be a valid address for the purposes of any notices or other communications in the absence of any notification of a change of address by that party to the other party and to the Arbitrator.
- 2.3** For the purpose of determining the date of the commencement of a time limit, a notice or other communication shall be treated as having been received on the day it is delivered, or in the case of a telecommunication, transmitted in accordance with Article 2.1.
- 2.4** For the purpose of determining compliance with a time limit, a notice or other communication shall be treated as having been sent made or transmitted if it is dispatched in accordance with Article 2.1 and 2.2 prior to or on the date of expiration of the time limit.
- 2.5** All communications with, and other documents sent to, the Arbitrator by one party shall at the same time be communicated to the other party.

## **Qualifications of the Arbitrator**

### **article 3**

- 3.1** Any natural person of whatever nationality who is of full age and capacity may be the Arbitrator.
- 3.2** The Arbitrator shall be and remain at all times independent and impartial.
- 3.3** Before nominating or proposing an Arbitrator the party seeking to nominate or propose that Arbitrator shall ascertain that that person is willing and able to accept appointment.
- 3.4** On being approached to act as Arbitrator, the prospective Arbitrator shall disclose in writing to the party or parties making the approach any circumstances likely to give rise to justifiable doubts as to the Arbitrator's impartiality or independence or confirm in writing that no

such circumstances exist. If at any stage in the arbitration circumstances arise that may give rise to such doubts, the Arbitrator shall promptly disclose those circumstances to the parties. Such circumstances include but are not limited to bias, interest in the result of the arbitration and past or present relationships with a party.

- 3.5** By accepting appointment the Arbitrator shall be deemed to have undertaken to make available sufficient time to enable the arbitration to be conducted and completed expeditiously. Prior to accepting appointment the Arbitrator shall confirm in writing to the parties (or, if applicable, to the relevant officer of the relevant appointing body, in which event the Arbitrator shall immediately after appointment copy such written confirmation to the parties) that the Arbitrator will make available sufficient time to conduct, and will conduct, the arbitration so as to conclude the arbitration within the timescales provided in Articles 11.5, 11.6, 11.7, 11.8, 18.3 and 19.
- 3.6** By accepting appointment the Arbitrator shall be deemed to be bound by this Code.

## **Challenge of the Arbitrator**

## **article 4**

- 4.1** A party may challenge the Arbitrator if circumstances exist or arise giving rise to justifiable doubts as to the Arbitrator's impartiality or independence or as to a party not having been given a fair opportunity to present its case.
- 4.2** The challenge shall be in writing and shall be delivered to the other party and to the Arbitrator.
- 4.3** The other party may agree to the challenge (in which case the Arbitrator shall withdraw from the arbitration) or the Arbitrator may decide to withdraw. In neither case does the withdrawal imply acceptance by the Arbitrator of the validity of the grounds stated for the challenge, unless the Arbitrator expressly so agrees.
- 4.4** Except where the Arbitrator is obliged to withdraw from the arbitration in accordance with Article 4.3, the Arbitrator shall have the power to hear and determine such challenges including, for the avoidance of any doubt, challenges to the Arbitrator's own jurisdiction, and including any objections with regard to the existence or validity of the arbitration clause or of the separate arbitration agreement.
- 4.5** The Arbitrator shall have the power to determine the existence, validity and scope of the contract of which an arbitration clause forms part. For the purposes of this Article an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the Arbitrator that the arbitration clause is null and void shall not for that

reason alone render the arbitration clause invalid.

- 4.6** Except as provided for in this Article 4.6 and in Articles 4.7 and 4.8, any challenge to the jurisdiction of the Arbitrator must be made to the Arbitrator not later than the date by which the Notice of Defence or reply to the counterclaim, as the case may be, is required to be delivered or made in order to comply with Article 1 provided that (1) if the Arbitrator has not at that time been appointed such a challenge must instead be made within seven days of the appointment of the Arbitrator and, separately, (2) if a claim or counterclaim is later amended such a challenge may be made in relation to the amended matter only, not later than the date of reply to such amended claim or counterclaim. If no such challenge is made then the right to make it shall be treated as having been irrevocably waived.
- 4.7** Article 4.6 shall not apply to a challenge which could not, with reasonable diligence, have been known to the party claiming to have a right to make such a challenge prior to the expiry of the timescales in Article 4.6. Except as provided for in Article 4.8, in the event of Article 4.6 being disapplied by this Article 4.7 the right to make a challenge to the jurisdiction of the Arbitrator shall be treated as having been irrevocably waived if the challenge is not made within fourteen days of the date upon which the right to challenge could, with reasonable diligence, have been known to the party claiming to have a right to make such a challenge.
- 4.8** Articles 4.6 and 4.7 shall not apply to a challenge which could not, with reasonable diligence, have been known to the party claiming to have a right to make such a challenge prior to the making of the Arbitrator's final award.
- 4.9** If the challenge is upheld by Arbitrator, the Arbitrator shall be deemed to have resigned upon the date of the decision upholding the challenge. For the avoidance of any doubt, Article 20.4 applies in the event of the Arbitrator upholding the challenge and being deemed to have resigned.
- 4.10** Pending the decision of the Arbitrator, the Arbitrator may, in the Arbitrator's discretion, continue with the arbitration.

## **Replacement of the Arbitrator**

## **article 5**

- 5.1** The Arbitrator shall not be entitled to resign or withdraw (except under Article 4) without the consent in writing of the parties, except upon the provision of a certificate from a registered medical doctor justifying resignation upon grounds of health.
- 5.2** When the Arbitrator has died, withdrawn, resigned or been removed from office the position left vacant shall be filled, unless the parties otherwise agree, by appointment by the relevant officer of the

Chartered Institute of Arbitrators (Scottish Branch) designated in Articles 1.5.4 and 1.5.6.

- 5.3** When a replacement Arbitrator is appointed in the course of an arbitration, it shall be for the replacement Arbitrator to determine whether any hearings held previously, in relation to which no partial, interim or final award has been issued, shall be repeated.
- 5.4** If in the view of a party the Arbitrator becomes incapacitated or unable to perform the duties of the Arbitrator's office the procedure in respect of challenge of the Arbitrator set out in Article 4 shall apply.
- 5.5** Pending replacement of the Arbitrator, the arbitral proceedings shall be suspended unless otherwise agreed by the parties. Any period of suspension shall be added to the period within which a final award must be issued in terms of Articles 11.5 and 11.6. If a period of suspension only commences after an extension has been agreed under Article 11.7, or has arisen by operation of Article 11.8, the period of suspension shall be added to the date agreed in terms of Article 11.7, or which applies by operation of Article 11.8.

## **The Arbitrator's Remuneration**

## **article 6**

- 6.1** The Arbitrator shall be compensated on a reasonable basis determined at the time of appointment for serving as Arbitrator, and shall be reimbursed for his time, travel costs and other reasonable outlays incurred in the course of the arbitration.
- 6.2** Provided there is agreement in writing in advance by the parties the Arbitrator's fees may include a charge for time reserved but not used as a result of late postponement or cancellation.
- 6.3** In the event of failure to agree at the time of appointment, or subsequently, on the Arbitrator's fees and reasonable outlays, and if the Arbitrator has failed to fix them in accordance with Articles 20.1 and 20.2, they shall be fixed upon the application of a party or the Arbitrator by the Auditor of the Court of Session, Scotland.
- 6.4** Where the Arbitrator has appointed a legal adviser, the fees and reasonable outlays of the legal adviser, if not agreed and if the Arbitrator has failed to fix them in accordance with Articles 20.1 and 20.2, shall be fixed by the Auditor of the Court of Session upon the application of a party or the Arbitrator.
- 6.5** Where the Auditor of the Court of Session is to fix fees and/or outlays under Articles 6.3 and/or 6.4 he shall do so in accordance with any basis of charge agreed between the Arbitrator and the parties or, if no basis of charge has been agreed between the Arbitrator and the parties, on the basis of a reasonable commercial rate of charge.

## **Communications with the Arbitrator**

## **article 7**

- 7.1** Except as otherwise provided in these Articles or permitted by the Arbitrator no party or anyone acting on its behalf shall have any communications with the Arbitrator, with the other side absent from those communications, with regard to any matter of substance relating to the proceedings.

## **Exclusion of Liability**

## **article 8**

- 8.1** The Arbitrator, any expert appointed by the Arbitrator, any legal adviser or any nominating body or officer thereof shall not be liable to any party for any act or omission in connection with any arbitration conducted under these Articles, except that that individual may be liable for the consequences of conscious and deliberate wrongdoing.

## **Seat of Arbitration**

## **article 9**

- 9.1** Unless the parties have agreed upon the seat of the arbitration the Arbitrator shall fix the seat of arbitration. Any award by the Arbitrator shall be deemed made at such place. Notwithstanding the above the Arbitrator may hold hearings wherever the Arbitrator deems appropriate.

## **Substantive Law Applicable**

## **article 10**

- 10.1** The Arbitrator shall apply the substantive law agreed by the parties as applicable to the dispute. Failing such agreement, the Arbitrator shall apply such law or laws as the Arbitrator determines to be appropriate.
- 10.2** In all cases the Arbitrator shall take account of the provisions of the contract and usage of the trade applicable to the contract.
- 10.3** The Arbitrator shall not decide, or act as, a mediator between the parties nor reach a decision on a basis other than one founded in the law which applies by virtue of Article 10.1, unless the parties have expressly authorised the Arbitrator to do so.

## **Conduct of Proceedings Generally**

## **article 11**

- 11.1** Subject to this Code, the Arbitrator may conduct the arbitration in whatever manner the Arbitrator considers appropriate, provided that the parties are treated with equality and that each party is given a fair opportunity to present its case. The parties shall comply with the

directions of the Arbitrator as to the conduct of the arbitration.

- 11.2** Without prejudice to the terms of Article 11.1, written pleadings in the normal form used in ordinary cases in the Scottish courts are not necessary unless the Arbitrator so orders, having been shown good cause for their use by one or more of the parties.
- 11.3** The Arbitrator in the exercise of the widest discretion shall conduct the proceedings with a view to the fair, speedy, and efficient resolution of the dispute. The Arbitrator may conduct preliminary conference(s) with the parties for the purpose of organising, scheduling and agreeing procedures to expedite the subsequent proceedings.
- 11.4** The Arbitrator may in the Arbitrator's discretion direct the order of any hearings of evidence, split proceedings, exclude cumulative or irrelevant witness testimony or other evidence and direct parties to focus their presentation on issues the decision of which may dispose of all or part of the case.
- 11.5** Subject to the provisions of Articles 5.5, 11.6, 11.7, 11.8, 18.3 and 19, the Arbitrator must make and issue the Arbitrator's final award no later than six months from the date of the appointment of the Arbitrator in terms of Article 1.5. For the purpose of achieving the foregoing maximum time period (including when extended under Articles 11.6, 11.7 and 11.8), the parties agree to co-operate and take every opportunity to save time where possible. For the same purpose, the Arbitrator has the power to order and impose time limits on the parties and the parties are bound by those time limits unless the Arbitrator varies them under the Arbitrator's powers under Article 12.6. In the event of non-compliance with any such time limits, the Arbitrator may exercise the power given to the Arbitrator in Article 12.7, provided such non-compliance satisfies the terms of that Article. The date by which the final award must be made and issued is in all cases a long stop and the Arbitrator should at all times endeavour to complete the arbitration as quickly as reasonably possible.
- 11.6** Notwithstanding the provisions of Article 11.5, and subject to Articles 5.5, 11.7, 11.8, 18.3 and 19, in cases which the Arbitrator determines are complex the Arbitrator may extend the maximum period referred to in Article 11.5 by a period of up to a further two months. In such an event the Arbitrator must make and issue the Arbitrator's final award no later than two months after the date which would otherwise have applied by virtue of Article 11.5.
- 11.7** Notwithstanding the provisions of Articles 11.5 and 11.6, and subject to this Article 11.7 and to Articles 5.5, 11.8, 18.3 and 19, the parties can agree with the Arbitrator an extension to the maximum time period provided for in Articles 11.5, 11.6 and this Article 11.7. In such an event, and subject to Articles 11.8, 18.3 and 19, the

Arbitrator must make and issue the Arbitrator's final award no later than the date agreed with the parties.

- 11.8** If the parties have not made payment of the Arbitrator's fees and outlays provided for under Article 17.4, and subject to Article 5.5, the Arbitrator shall have the power unilaterally to extend the date for issue of the Arbitrator's final award until the day following the making of payment of such fees and outlays.

## **Additional Powers of the Arbitrator**

## **article 12**

- 12.1** In addition to the powers conferred generally or specifically on the Arbitrator elsewhere in this Code, the Arbitrator shall have the following powers (unless the parties otherwise agree):-

**12.2** power to make interim or partial awards;

**12.3** power to award damages;

**12.4** power to rectify the terms of any contract to the extent permitted by the law applicable to that contract;

**12.5** power to order that simple or compound interest shall be paid by any party on any sum awarded at such rate or rates as the Arbitrator determines to be appropriate without being bound by legal rates of interest imposed by any state or court in respect of any period which the Arbitrator determines to be appropriate including a date prior to the appointment of the Arbitrator and ending not later than the date upon which the award is complied with;

**12.6** power to vary time limits whether imposed by the Arbitrator or this Code (other than those which apply by virtue of Articles 11.5, 11.6, 11.7 and 11.8 except to the extent that such variation is permitted by those Articles) whenever it seems appropriate to so do;

**12.7** power in the event that a party is unduly dilatory in presenting its claim, counterclaim or defence to the prejudice of the other party to dismiss the claim or counterclaim or exclude the defences (in each case either in whole or in part) as the case may be;

**12.8** power to appoint a legal adviser (who, for the purposes of Article 15 only, shall be deemed not to be an expert but whose legal advice shall be issued either in writing to the Arbitrator, and copied by the Arbitrator to the parties for comment, or orally at a meeting or hearing attended by the parties at which the parties shall also be given the opportunity to comment on the legal advice given orally), whose fees and outlays shall be included in the expenses of the arbitration in terms of Article 20;

**12.9** power to decide whether and to what extent the Arbitrator should

take the initiative in ascertaining the facts and the law;

- 12.10** power to decide whether and to what extent evidence should be given under oath or affirmation.

## **Evidence, Hearings and Submissions**

## **article 13**

- 13.1** The Arbitrator shall determine the manner in which the parties shall present their cases. Unless otherwise agreed by the parties or determined by the Arbitrator under Article 11, the presentation of a party's case shall include the advance submission (by a time to be determined by the Arbitrator) of an outline of the evidence to be presented including the name, capacity and subject of testimony of any witness proposed to be called, the language in which the witness will testify and an estimate of the amount of time required for that witness's direct testimony if it were to be given orally.
- 13.2** In order to define the issues to be heard and determined the Arbitrator may make pre-hearing orders in relation to the arbitration and instruct parties within such time limits as the Arbitrator thinks fit to file more detailed statements of claim and defence.
- 13.3** Subject always to the provisions of Articles 11.5, 11.6, 11.7, 11.8, 18.3 and 19, the Arbitrator may impose such time limits as the Arbitrator considers reasonable for each stage of the proceedings including the time allocated to each party for presentation of its case or for rebuttal.
- 13.4** At any time during the arbitration the Arbitrator may at the request of a party or of the Arbitrator's own motion order a party to deliver to the Arbitrator and to the other party such documents or other evidence as the Arbitrator considers necessary or appropriate to assist the Arbitrator in making the Arbitrator's award and may order, if so necessary or appropriate, a party to make available to the Arbitrator (or to an expert appointed by the Arbitrator) or to the other party or its expert any property in its control for inspection or testing.
- 13.5** Any party which expresses a desire to that effect in reasonable time shall be heard orally before the Arbitrator unless the parties have agreed in writing on a documents only arbitration or unless the Arbitrator deems such a hearing not to be necessary.
- 13.6** The Arbitrator shall fix the date, times and place of any meetings and hearings in the arbitration and shall give the parties reasonable notice thereof.
- 13.7** The Arbitrator may in advance of any meeting or hearing submit to the parties a list of questions which the Arbitrator wishes them to answer at the meeting or hearing.

- 13.8** If any of the parties although duly notified in accordance with Article 14.6 fails to appear at a meeting or hearing without valid excuse the Arbitrator shall have the power to proceed with the meeting or hearing in its absence.
- 13.9** At any meeting or hearing each party shall be entitled to be present. All meetings and hearings shall be in private. Except with the approval of the Arbitrator and the parties, persons not involved in the proceedings shall not be admitted. The Arbitrator may require in advance that notice be given by each party of whom that party intends to have present (including representatives and advisers) at any meeting or hearing. The Arbitrator may require the retirement of any witness during the testimony of other witnesses.
- 13.10** The parties may appear in person or through duly authorised representatives. In addition they may be assisted by advisers.

## **Evidence of Witnesses**

## **article 14**

- 14.1** The rules of evidence used in judicial proceedings shall not apply to the arbitration unless the Arbitrator determines otherwise. The Arbitrator shall determine the applicability of any privilege or immunity, and the admissibility, relevance, materiality and weight of the evidence offered.
- 14.2** Before any hearing of evidence the Arbitrator shall require any party to give notice of the identity of each witness that party wishes to call and may require notice of the subject matter of that witness's testimony, its contents and relevance to the issues in the arbitration to be given.
- 14.3** The Arbitrator may also determine the times, manner and form in which such material should be exchanged between parties and presented to the Arbitrator. The Arbitrator has discretion to allow, refuse or limit the appearances of witnesses.
- 14.4** If the Arbitrator so determines, the evidence of witnesses may be presented in the form of witness statements signed by them.
- 14.5** Any party may request that a witness on whose witness testimony another party seeks to rely should attend for oral questioning on matters specified in the request at a hearing before the Arbitrator. If the Arbitrator orders this other party to produce the witness, and the witness fails to attend the hearing without good cause, the Arbitrator may place such weight on the witness testimony (or exclude it altogether) as the Arbitrator considers appropriate in the circumstances of the case.

## Experts

## article 15

- 15.1** The Arbitrator may appoint one or more experts to report to it in writing on specific issues to be determined by the Arbitrator. A copy of the expert's draft terms of reference shall be communicated to the parties and they be given a period of time to comment thereon before the terms of the reference are finally established by the Arbitrator, and copied to the parties.
- 15.2** The parties shall give the expert any relevant information or produce for inspection any property that the expert may require. In the event of disputes between the expert and a party as to the material to be produced or inspected the Arbitrator shall determine the issue.
- 15.3** Upon receipt of the expert's report the Arbitrator shall communicate a copy to the parties who shall be entitled to express in writing their opinion on that report. A party shall be entitled to examine any material upon which the expert has relied in the report.
- 15.4** Upon receipt of the expert's report a party may request a hearing thereon which the Arbitrator shall be bound to grant. At such a hearing the expert shall be present and may be questioned on his report on behalf of a party, and expert witnesses may testify on behalf of a party on the points at issue.
- 15.5** The fees and outlays of such experts appointed by the Arbitrator shall be part of the expenses of the arbitration in terms of Article 20.

## Interim Measures

## article 16

- 16.1** At the request of a party the Arbitrator may decide as it deems necessary:-
- 16.1.1** To order any Respondent to a claim or counterclaim to provide security for all or part of the amount in dispute in such manner and upon such terms as the Arbitrator considers appropriate. Such terms may include the provision by the party claiming security of a cross indemnity itself secured in whichever manner the Arbitrator considers appropriate for any expenses or losses incurred by the party ordered to provide security in doing so. The amount of such expenses or losses may be determined by the Arbitrator in one or more awards.
- 16.1.2** To order the preservation, storage, sale or other disposal of any property or thing under the control of a party and relating to the subject matter of the arbitration.
- 16.1.3** To order, on a provisional basis, subject to final determination in an award any relief which the Arbitrator would have power to grant in an award including interdicts of one or more of the parties and provisional orders for the payment of money or the disposition of

property by one or more of the parties.

- 16.2** The Arbitrator shall have power at the request of a party to order any other party to provide security for the expenses of that party in such manner and on such terms and for such amount as the Arbitrator considers appropriate.
- 16.3** In the event that a party does not comply with an interim measure ordered by the Arbitrator under Article 16.1 or 16.2 within a time limit fixed by the Arbitrator, the Arbitrator may sist or dismiss any claim or counterclaim made by that party, or refuse to allow it to present a defence as may seem appropriate.
- 16.4** The power of the Arbitrator under Article 16.1 shall not prejudice any party's right to apply to any state court for interim or conservatory measures either before or after the Arbitrator has been constituted.

## **Closure of Proceedings**

## **article 17**

- 17.1** The Arbitrator shall declare the proceedings closed when the Arbitrator is satisfied that the parties have had adequate opportunity to present their cases. Once the Arbitrator has done so the parties may not present any further material to the Arbitrator.
- 17.2** The Arbitrator may on the Arbitrator's own motion or on the application of a party re-open the proceedings at any time before the award is made.
- 17.3** The Arbitrator shall use best endeavours to make the Arbitrator's final award within forty-five days of the closure of the proceedings or such other period as the parties and the Arbitrator shall agree but always subject to the provisions of Articles 11.5, 11.6, 11.7 and 11.8.
- 17.4** Not later than eighteen days before the final award is due to be made, the Arbitrator shall send to the parties the Arbitrator's reasonable estimate of the expenses of the arbitration (as defined in Article 20.2) incurred and likely to be incurred up to the making of the final award (including VAT if applicable). Provided the parties have paid this sum to account to the Arbitrator (or to a third party acceptable to the Arbitrator to be held to the order of the Arbitrator) the Arbitrator shall have no lien over the award and may not exercise the powers the Arbitrator has under Articles 11.8 and 18.3. Without prejudice to the obligation upon the Arbitrator in Article 20.1, a final account of the expenses of the arbitration (as defined in Article 20.2) shall be sent by the Arbitrator to the parties within twenty one days after issuing the final award. In the event that the final account shows a balance of overpayment having been made to the Arbitrator that balance shall be repaid by the Arbitrator to the parties in amounts which reimburse each party for the amount of any overpayment made by each party.

## The Award

## article 18

- 18.1** The Arbitrator may make separate awards on different issues at different times but always subject to the provisions of Articles 11.5, 11.6, 11.7 and 11.8. Such awards shall have the same status and effect as any other award made by the Arbitrator. The Arbitrator is not obliged to issue awards in draft form.
- 18.2** The Arbitrator shall make any award in writing and unless the parties agree otherwise shall state (at the time of making the award) the reasons upon which the award is based. The award shall also state the date when the award was made (being the date of signature by the Arbitrator and the seat of the arbitration and shall be signed by the Arbitrator and the Arbitrator's signature shall be witnessed. The place and date where the award was signed shall also be stated in the award, along with the full name of the Arbitrator and the full name and address of the witness.
- 18.3** The Arbitrator shall be responsible for delivering copies of the award to the parties. Subject always to Article 11.8 being operated, the Arbitrator shall be entitled to withhold the delivering of the award until the fees and outlays due to the Arbitrator in terms of Article 17.4 have been met in full.
- 18.4** Any award interim or final shall be binding on the parties from the date on which it is made, subject to Articles 4 and 19. By agreeing to arbitration under the Code, the parties undertake to implement any award immediately and without delay subject to Articles 4 and 19 and the parties irrevocably waive their right to any form of appeal review or recourse to any state court or other judicial authority except in so far as such a right would arise or be preserved by the operation of Articles 4 or 16.4.
- 18.5** Without prejudice to the foregoing generality all recourse to the Court of Session under Section 3 of the Administration of Justice (Scotland) Act 1972 is expressly excluded.
- 18.6** If the seat of the arbitration is in Scotland, the parties and the Arbitrator consent to the registration of the award (and of any addition or correction by way of a memorandum as provided for in Articles 19.1 and 19.2) for execution in the Books of Council and Session, provided always that (owing to the terms of Articles 19.1 and 19.2) such consent is only given (if no request is made under Article 19.1) for registration after the elapse of 14 days after the date of the award or (if a request is made under Article 19.1) such consent is only given for registration after the Arbitrator has made corrections or additions under Article 19.1 or after the elapse of 14 days after the date of the award, whichever is the later.

## **Correction of Awards**

## **article 19**

- 19.1** Within 14 days of receipt of any award a party may, with notice to the other party, request the Arbitrator in writing to correct in an award any errors in computation, clerical or typographical errors or any errors of a similar nature or make an additional award as to claims presented but omitted from the award. If the Arbitrator considers the request justified the Arbitrator shall make the corrections or addition within 14 days of receipt of the request. Any addition or correction shall take the form of a separate memorandum dated and signed by the Arbitrator in a manner identical to that provided in Article 18.2 and shall become part of the award for all purposes.
- 19.2** The Arbitrator may likewise, on the Arbitrator's own initiative, within 14 days of the date of the award correct any error of the nature described in Article 19.1 in the same manner and to the same effect.

## **Expenses**

## **article 20**

- 20.1** Subject always to the terms of Articles 11.5 to 11.8, the Arbitrator shall in the Arbitrator's award and subject to the parties' joint and several liability to the Arbitrator for the expenses of the arbitration and to any agreement between the parties, fix the expenses of the arbitration and apportion them between the parties as the Arbitrator considers reasonable in the whole circumstances.
- 20.2** For the purposes of Articles 17.4, 20.1, 20.4, 20.5 and 21.2, the expenses of the arbitration are:-
- 20.2.1** The fees of the Arbitrator.
- 20.2.2** The fees and outlays in respect of any assistance reasonably required by the Arbitrator in the course of the arbitration process including the fees and outlays of any experts appointed by the Arbitrator and any legal adviser(s) appointed by the Arbitrator.
- 20.2.3** The reasonable outlays in respect of meeting and hearing facilities.
- 20.2.4** Any other outlays reasonably incurred by the Arbitrator in the conduct of the arbitration.
- 20.3** The Arbitrator shall also have power, unless the parties otherwise agree, to order in the Arbitrator's award that all or part of the legal or other expenses incurred by a party in the course of the arbitration shall be paid by another party to the arbitration. The Arbitrator shall have power to determine and fix the amount of such expenses on such reasonable basis as the Arbitrator thinks fit or to order taxation by the Auditor of the Court of Session. The Arbitrator may also make

an award of such expenses from time to time in the course of the arbitration proceedings.

- 20.4** If the arbitration is abandoned, suspended or concluded by agreement or otherwise before the final award is made, the parties shall remain jointly and severally liable to pay to the Arbitrator the expenses of the arbitration as fixed by the Arbitrator under Article 20.1.
- 20.5** The Arbitrator shall have power in the course of the proceedings and from time to time to order the parties to make payments in advance in respect of the expenses of the arbitration mentioned in Article 20.1 in such sums as to the Arbitrator appears reasonable.

## **Settlement**

## **article 21**

- 21.1** In the event of a settlement of the parties' dispute the Arbitrator may render an award recording the settlement if the parties so request in writing, provided that such an award (which need not contain reasons) expressly states that it is an award made by the parties' consent.
- 21.2** If a settlement is reached and the parties do not require an award, then on written confirmation to the Arbitrator that a settlement has been reached, the Arbitrator shall be discharged and the arbitration proceedings concluded subject to payment by the parties of any outstanding expenses of the arbitration under Article 20.