

# Alternative Dispute Resolution Act, 2010

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#### THE SEVEN HUNDRED AND NINETY-EIGHTH

# ACT

OF THE PARLIAMENT OF THE REPUBLIC  
OF GHANA  
ENTITLED

**ALTERNATIVE DISPUTE RESOLUTION ACT, 2010**

AN ACT to provide for the settlement of disputes by arbitration, mediation and customary arbitration, to establish an Alternative Dispute Resolution Centre and to provide for related matters.

DATE OF ASSENT: *31st May, 2010.*

PASSED by Parliament and assented to by the President:

**PART ONE — ARBITRATION**

*Arbitration agreement*

**Application**

1. This Act applies to matters other than those that relate to
  - (a) the national or public interest;
  - (b) the environment;
  - (c) the enforcement and interpretation of the Constitution; or
  - (d) any other matter that by law cannot be settled by an alternative dispute resolution method.

**Form of arbitration agreement**

2. (1) Parties to a written agreement may provide that a dispute arising under the agreement shall be resolved by arbitration.

(2) A provision to submit a dispute to arbitration may be in the form of an arbitration clause in the agreement or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing and may be in the form provided in the Fifth Schedule to this Act.

(4) For the purpose of this Act an arbitration agreement is in writing if

- (a) it is made by exchange of communications in writing including exchange of letters, telex, fax, e-mail or other means of communication which provide a record of the agreement; or
- (b) there is an exchange of statement of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

**Separation of arbitration agreement and revocation of agreement**

3. (1) Unless otherwise agreed by the parties, an arbitration agreement which forms or is intended to form part of another agreement, shall not be regarded as invalid, non-existent or ineffective because that other agreement is invalid or did not come into existence or has become ineffective and shall for that purpose be treated as a distinct agreement.

(2) Unless a contrary intention is expressed in the agreement, an arbitration agreement is irrevocable except by agreement of the parties.

### **Arbitration agreement not discharged by death**

4. An arbitration agreement is not discharged by the death of the person or the dissolution or merger of the body corporate which is a party to that agreement and it is enforceable by or against the personal representative, liquidator or successor of the party.

### **Reference to arbitration**

5. (1) A party to a dispute in respect of which there is an arbitration agreement may, subject to the terms of the arbitration agreement, refer the dispute to

- (a) any person or institution for arbitration; or
- (b) the Alternative Dispute Resolution Centre established under Part IV to facilitate the arbitration.

(2) Where reference is made to a person or institution other than the Centre the procedure and rules shall be as the parties and arbitrators determine.

(3) Where a reference is made to the Centre, the Rules set out in Regulations made under this Act shall apply to the arbitration.

### **Application to court**

6. (1) Where there is an arbitration agreement and a party commences an action in a court, the other party may on entering appearance, and on notice to the party who commenced the action in court, apply to the court to refer the action or a part of the action to which the arbitration agreement relates, to arbitration.

(2) The court on hearing an application made under subsection (1) shall, if satisfied that the matter in respect of which the application has been made is a matter in respect of which there is an arbitration agreement, refer the matter to arbitration.

(3) The grant of an application shall serve as stay of the proceedings in the court.

(4) Unless otherwise agreed to by the parties, where proceedings in court are stayed for the purpose of arbitration, any security given, property detained, injunction or restraining orders imposed in the original action shall apply to the arbitration.

### **Reference by court**

7. (1) Where a court before which an action is pending is of the view that the action or a part of the action can be resolved through arbitration, that court may with the consent of the parties in writing, despite that there is no arbitration agreement in respect of the matter in dispute, refer the action or any part of the action for arbitration.

(2) A reference under subsection (1) shall state

- (a) the reasons for the reference;
- (b) the nature of the dispute;
- (c) the monetary value of the claim; and
- (d) the remedy sought

and shall have attached copies of the pleadings and any other documents the court considers relevant to it.

(3) Where at the time of reference under this section pleadings are closed, the pleadings shall be deemed to be the claim, defence, reply, counterclaim and defence to counterclaim as the case may be in the arbitration proceedings.

(4) For the purpose of a reference under this section the plaintiff in the original action shall be the claimant and the defendant shall be the respondent in the arbitration.

(5) Where in any action before a court the court realises that the action is the subject of an arbitration agreement, the court shall stay the proceedings and refer the parties to arbitration.

### **Change in claim or counterclaim**

8. (1) A party may make a new claim or counterclaim or change a defence by writing to the other party.

(2) The procedure in relation to change in claim or counterclaim shall be as determined by the parties and the arbitrators or the parties may adopt the Rules set out in the Second Schedule to this Act.

### **Modification of time**

9. Where an arbitration agreement or this Act fixes a time for taking any step in an arbitration or other dispute resolution proceedings,

(a) the parties, by agreement;

(b) the arbitrator, with the agreement of the parties; or

(c) the appointing authority, at the request of a party for good cause shown may modify that period of time, except that an arbitrator or the appointing authority shall not extend the time for making an award.

### **Reckoning of time**

10. Parties to an arbitration may agree on a method of reckoning any period of time in relation to the arbitration.

### **Place of arbitration**

11. (1) The parties are free to agree on the place of arbitration.

(2) In the absence of an agreement the place of arbitration shall be determined by the arbitral tribunal which shall take into account the circumstances of the case and the convenience of the parties.

(3) Despite the other provisions of this section, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers suitable after consultation among its members, for hearing witnesses, the parties, experts or for the inspection of documents, goods or other items.

### *Qualification and appointment of arbitrator*

### **Qualification of arbitrator**

12. (1) An arbitrator shall be a person appointed by the parties or by a person or institution acting under a power conferred by the parties and may be a person with the experience or qualification that the parties may agree on.

(2) A person without experience or qualification relevant to the subject of the dispute may be appointed an arbitrator if the parties so agree.

(3) A person of any nationality may be appointed an arbitrator unless otherwise determined by the parties.

(4) In appointing an arbitrator, the parties, the person or the institution vested with the power of appointment shall have regard to

- (a) the personal, proprietary, fiduciary or financial interest of the arbitrator in the matter to which the arbitration relates;
- (b) the relationship of the arbitrator to a party or counsel of a party to the arbitration;
- (c) the nationalities of the parties; and
- (d) other relevant considerations

to ensure the appointment of an independent and an impartial arbitrator.

(5) A person appointed an arbitrator shall before acceptance, disclose to the parties or the appointing authority any information likely to affect the neutrality of the arbitration, particularly with regard to that arbitrator's interest in any case involving the parties.

### **Number of arbitrators**

**13.** (1) The parties are at liberty to determine the number of arbitrators except that the number must be an uneven number.

(2) Failing the determination as provided in subsection (1), the arbitration shall consist of three arbitrators.

### **Appointment of arbitrator**

**14.** (1) Except otherwise provided in the arbitration agreement, the parties are at liberty to agree on the procedure for appointing an arbitrator.

(2) Where

- (a) the arbitration agreement does not provide for a procedure for appointing an arbitrator; or
- (b) the parties fail to agree on a procedure for appointing an arbitrator and the arbitration agreement does not provide for the settling of the disagreement,

each party, in an arbitration which requires the appointment of three arbitrators, shall appoint one arbitrator and the two appointed arbitrators, shall appoint the third arbitrator who shall be the chairperson.

(3) For the purposes of section 13 and subsection (2) of this section where

- (a) a party fails to appoint an arbitrator within fourteen days from the receipt of a request to do so from the other party; or
- (b) the two appointed arbitrators fail to agree on the third arbitrator within fourteen days from the date of their appointment,

the appointment shall be made by the appointing authority upon a request by a party.

(4) In an arbitration which requires the appointment of a sole arbitrator, if the parties fail to agree on the arbitrator within fourteen days after the receipt of a request for arbitration by one party from the other party, the appointment shall be made by the appointing authority upon a request by a party.

(5) Despite any provision in this section, parties are free to agree on what should happen in the event of a failure of the procedure to appoint arbitrators.

(6) A party may for the purpose of appointing an arbitrator request for the register of arbitrators maintained by the Centre and the Centre shall comply with the request.



(7) An appointing authority may keep a register of arbitrators and mediators which may be accessed by the public.

#### *Impartiality and challenge of arbitrator*

#### **Impartiality and challenge of arbitrator**

15. (1) Where a person is requested to be an arbitrator, that person shall disclose in writing any circumstances likely to give reasonable cause to doubt as to the independence or impartiality of that person.

(2) An arbitrator, from the time of appointment and throughout the arbitral proceedings shall without delay, disclose to the parties in writing any circumstances referred to in subsection (1).

(3) An arbitrator's appointment may be challenged only if

(a) circumstances exist that give rise to reasonable cause to doubt as to the arbitrator's independence or impartiality; or

(b) the arbitrator does not possess the qualification agreed on by the parties.

(4) A party may not challenge an arbitrator appointed by the party or in whose appointment that party participated, except for reasons of which the party becomes aware subsequent to the appointment.

#### **Challenge of appointment procedure**

16. (1) Subject to subsection (2), the parties are free to agree on a procedure for challenging the appointment of an arbitrator.

(2) Unless otherwise agreed upon in accordance with subsection (1), a party challenging the appointment of an arbitrator, shall within fifteen days of becoming aware of the constitution of the arbitral tribunal or after becoming aware of circumstances that justify the challenge of the appointment of an arbitrator, submit a written statement of the reasons for the challenge to the arbitrator and any other arbitrators.

(3) Unless the arbitrator whose appointment is challenged, withdraws from the arbitration or the other party to the arbitration agrees to the challenge, the arbitral tribunal shall decide on the challenge but in the case of a sole arbitrator

(a) where the arbitrator is appointed by an appointing authority, the appointing authority shall decide on the challenge,

(b) where the arbitrator is appointed by a party the party challenging the arbitrator may apply to the High Court for the determination of the challenge.

(4) Where a sole arbitrator's appointment is successfully challenged the sole arbitrator shall cease to be the arbitrator for the case.

(5) Where the challenge of an arbitrator is from both parties, the appointing authority shall replace the arbitrator.

#### *Revocation of arbitrator's authority*

#### **Revocation of arbitrator's authority**

17. (1) The parties may agree on the circumstances under which the appointment of an arbitrator may be revoked.

(2) Unless the parties have agreed on the circumstances for revocation, the authority of an arbitrator terminates if,

- (a) the arbitrator withdraws from office as an arbitrator;
- (b) the parties acting jointly or by the appointing authority vested by the parties with the power for the purpose, terminates the appointment; or
- (c) the arbitrator fails to sit within a reasonable time.

(3) The revocation of the authority of an arbitrator by the parties acting jointly shall be in writing.

### **Revocation of arbitrator's authority by the High Court**

**18.** (1) The High Court may on an application on notice by a party to an arbitration remove an arbitrator where it considers it fit.

(2) The Court may make an order to remove an arbitrator where

- (a) there is sufficient reason to doubt the impartiality of the arbitrator;
- (b) the arbitrator does not possess the qualifications or experience required under the arbitration agreement or agreed to by the parties;
- (c) the arbitrator is physically or mentally incapable or there is justifiable doubt as to the arbitrator's capability to conduct the proceedings;
- (d) the arbitrator has refused or failed to
  - (i) conduct the arbitral proceedings properly; or
  - (ii) use reasonable despatch in conducting the proceedings or making an award

and substantial injustice has or will be caused to the applicant.

(3) Where the parties have by agreement vested the power of removal of an arbitrator in an appointing authority, the Court shall not entertain the application unless it is satisfied that the applicant has prior to the application, exhausted the available recourse.

(4) An application under subsection (2) shall operate as a stay of arbitral proceedings.

(5) The arbitrator may make representation to the Court in respect of the application.

(6) Where the Court upon conclusion of the hearing of the application, removes the arbitrator, it may make any orders that it considers appropriate for payment of fees and expenses of the arbitrator or the repayment by the arbitrator of any fees or expenses already paid to the arbitrator.

### *Vacancy in the Arbitral Tribunal*

### **Resignation of arbitrator**

**19.** (1) The parties may agree with the arbitrator, in the event of the resignation of the arbitrator, on the fees or expenses and relief for any liability incurred by the arbitrator.

(2) If there is no agreement under subsection (1), an arbitrator who resigns may on notice to the parties, apply to the appointing authority if any or the High Court for

- (a) relief from any liability incurred; and
- (b) an order in respect of entitlement to fees or expenses.

(3) Where there is an appointing authority, an application under subsection (1) shall first be made to the appointing authority.

(4) If the Court or the appointing authority finds the resignation of the arbitrator reasonable, it may grant relief on such terms as it thinks appropriate.

(5) An arbitrator who is dissatisfied with a decision of the Court or the appointing authority in respect of an application for a relief or an order, may

- (a) in the case of an application to the Court, appeal to the Court of Appeal; or
- (b) in the case of an appointing authority, apply to the Court for judicial review.

(6) The parties may agree with the arbitrator or the personal representative of the arbitrator on the fees or expenses and relief for any liability incurred by the arbitrator in the event of a removal or death of an arbitrator.

### **Death of arbitrator or person who appointed the arbitrator**

**20.** (1) The authority of an arbitrator ceases on the arbitrator's death.

(2) Unless the parties otherwise agree, the death of the person who appointed the arbitrator does not revoke the arbitrator's appointment.

### **Filling of vacancy**

**21.** (1) If the position of an arbitrator becomes vacant, the parties may agree on

- (a) whether and how the vacancy is to be filled, and
- (b) whether the previous proceedings should be adopted.

(2) If there is no agreement between the parties under subsection (1)(a), the appointing authority shall, on a reference by a party, appoint another arbitrator in accordance with this Act.

(3) Where the parties fail to reach an agreement under subsection (1)(b) on the appointment of an arbitrator to fill a vacancy, the new arbitrator shall decide whether to adopt the previous proceedings or to start afresh.

### *Fees and Immunity of arbitrators*

### **Fees for arbitrators**

**22.** (1) The parties and the arbitrators shall agree on the fees payable by the parties in respect of the arbitration and the parties are jointly and severally liable for the payment of the agreed fees and if a dispute arises about the fees a party may refer the issue to the appointing authority or the High Court for resolution.

(2) An arbitrator shall be paid, based on

- (a) the value of the subject matter of the arbitration;
- (b) the complexity of the case; and
- (c) the agreed hourly rate of fee.

(3) An arbitrator may after consultation with the parties request the parties to make further payments in respect of fees where the circumstances so require.

(4) A party may, within twenty-eight days after the date of the determination of the amount of fees, apply to the appointing authority or the Court upon notice to the other party and the arbitrators, for an order adjusting the amount of fees upon conditions as the appointing authority or the Court shall determine and any excess payment made as a result of the adjustment may be ordered to be repaid having regard to all the circumstances.

(5) Subsection (3) applies to an arbitrator who has ceased to act.

(6) Where there is an appointing authority, a matter shall not be referred to the Court in this section unless the matter has been first referred to the appointing authority.

### **Immunity of arbitrator**

**23.** (1) An arbitrator is not liable for any act or omission in the discharge of the arbitrator's functions as an arbitrator unless the arbitrator is shown to have acted in bad faith.

(2) Subsection (1) applies to an employee or an agent of an arbitrator.

(3) This section does not affect a liability incurred by an arbitrator as a result of the resignation of the arbitrator.

### *Jurisdiction of Arbitral Tribunal*

### **Competence to rule on jurisdiction**

**24.** Unless otherwise agreed by the parties, the arbitral tribunal may rule on its own jurisdiction particularly in respect of

(a) the existence, scope or validity of the arbitration agreement;

(b) the existence or validity of the agreement to which the arbitration agreement relates;

(c) whether the matters submitted to arbitration are in accordance with the arbitration agreement.

### **Objection to jurisdiction**

**25.** (1) A party that intends to object to the jurisdiction of an arbitrator shall do so before taking the first step in the proceedings to contest the case on its merits.

(2) The appointment or the participation in the appointment of an arbitrator by a party is not a bar to that party raising an objection on jurisdiction.

(3) Subject to subsection (1), a party who in the course of arbitral proceedings intends to raise an objection that the arbitrator is exceeding the arbitrator's jurisdiction shall do so immediately after the matter alleged to be beyond jurisdiction is raised.

(4) Despite subsections (1) and (3), the arbitrator may entertain an objection made later than the prescribed time if the arbitrator considers that there is sufficient justification to do so.

### **Application to High Court on jurisdiction**

**26.** (1) A party dissatisfied with the arbitrator's ruling on jurisdiction may on notice to the arbitrator and the other party apply to the appointing authority or the High Court for a determination of the arbitrator's jurisdiction.

(2) An application under subsection (1) shall be made within seven days of the arbitrator's ruling and shall state the reasons for the application.

(3) The appointing authority or the Court may consider and grant an application if it is satisfied that

(a) the application has been made within the stipulated time; and

(b) there is justification for the Court or the appointing authority to intervene.

(4) Unless the parties otherwise agree, an application to the appointing authority or the Court shall not serve as a stay of the arbitral proceedings.

(5) An appeal, in the case of the Court or a judicial review in the case of an appointing authority, does not lie from a decision under subsection (3) except with the leave of the Court.

(6) The Court shall grant leave for a judicial review or to appeal where it is satisfied that the appeal or judicial review

- (a) involves a point of law which is fundamental to the case; or
- (b) is one which for some special reason deserves consideration by the Court or the Court of Appeal.

### **Waiver of right**

27. A party who takes part or continues to take part in an arbitral proceeding, knowing that

- (a) the arbitrator does not have jurisdiction;
- (b) the proceedings are improperly conducted;
- (c) the arbitration agreement or this Act has not been complied with; or
- (d) there is an irregularity in respect of the arbitrator or proceedings

and who fails to promptly or within the time specified in the arbitration agreement or under this Act to object to the proceedings shall be deemed to have waived the right to raise the objection.

### **Rights of party not notified of arbitral proceedings**

28. (1) A party to an agreement who is not notified of arbitration proceedings arising under that agreement may, by an application to the High Court,

- (a) question whether there is a valid arbitration agreement;
- (b) question whether the panel is properly constituted;
- (c) question whether the matters submitted are in accordance with the arbitration agreement;
- (d) challenge an award on the ground of lack of jurisdiction in relation to that party; and
- (e) challenge an award on the ground of serious irregularity that affects that party.

(2) A party whose application to the Court is refused may, with the leave of the Court appeal to the Court of Appeal.

(3) The aggrieved party may apply to the Court for a stay of the arbitral proceedings pending the determination of the complaint under section 28 (1).

### *Arbitral processes*

### **Arbitration management conference**

29. (1) Unless the parties otherwise decide, an arbitrator shall, within fourteen days of being appointed and upon giving seven days written notice to the parties, conduct an arbitration management conference with the parties or their representatives in person or through electronic or telecommunication media to determine

- (a) the issue to be resolved by arbitration;
- (b) the date, time, place and estimated duration of the hearing;
- (c) the need for discovery, production of documents or the issue of interrogatories and to establish how this should be done;
- (d) the law, rules of evidence and the burden of proof that is or are to apply to the proceedings;

- (e) the exchange of declaration regarding facts, exhibits, witnesses and related issues;
- (f) whether there is the need to resolve issues of liability and damages separately;
- (g) whether the summary of evidence of parties should be oral or in writing;
- (h) the form of the award;
- (i) costs and arbitrator's fees; and
- (j) any other issue relating to the arbitration.

(2) The decisions of an arbitrator at an arbitration management conference shall be in writing and shall be served on the parties.

(3) An arbitrator may hold further arbitration management conference as is considered necessary upon written notice to the parties.

### **Conciliation conference**

**30.** The appointing authority or any institution or individual may, with the consent of the parties at any time during the arbitration process, arrange a conciliation conference to facilitate the resolution of the dispute, except that an arbitrator in the dispute shall not be a conciliator.

### **Duties and powers of arbitrator in proceedings**

**31.** (1) An arbitrator shall

- (a) be fair and impartial to the parties; and
- (b) give each party the opportunity to present its case.

(2) Subject to this Act, an arbitrator shall conduct the arbitration in a manner that the arbitrator considers appropriate, shall avoid unnecessary delay and expenses and adopt measures that will expedite resolution of the dispute.

(3) Subject to the right of parties to agree on any matter of procedure, the arbitrator shall decide on matters of procedure and evidence.

(4) Matters of procedure and evidence include

- (a) the time and place for holding any part of the proceedings;
- (b) the questions that should be put to and answered by respective parties and how the questions should be put;
- (c) the documents to be provided by the parties and at what stage of the proceedings; and
- (d) the application or non-application of the strict rules of evidence as to admissibility, relevance or weight of any material sought to be tendered and how the material should be tendered.

(5) The arbitrator may determine the time within which any direction is to be complied with.

(6) The parties may agree to permit an arbitrator to

- (a) consolidate one arbitral proceedings with other arbitral proceedings; and
- (d) hold concurrent hearings.

(7) Unless otherwise agreed by the parties, the arbitrator may order a claimant to provide security for the costs of the arbitration whether the claimant is an individual resident in this country or a body established or registered by law in this country.

(8) The arbitrator may give directions in respect of property which is the subject matter of the arbitration and which is owned or is in the possession of a party,

(a) for the inspection, preservation, photographing or detention of the property by the arbitrator, an expert or a party; and

(b) that samples be taken or an experiment be conducted of the property.

(9) The arbitrator may subpoena a witness and shall at the request of a party subpoena a witness.

(10) The arbitrator may direct a party or a witness to give evidence on oath or affirmation and may for that purpose administer the oath or affirmation.

### **Language of proceedings**

**32.** (1) The parties are free to agree on the language to be used in the arbitral proceedings.

(2) In the absence of an agreement, the arbitrator shall determine the language of the proceedings.

(3) The arbitrator may direct that any documentary evidence should be accompanied with a translation into a language agreed on by the parties or determined by the arbitrator.

### **Statement of claim and defence**

**33.** (1) The parties are free to agree on the time within which the claimant should submit a statement of claim and the respondent a defence.

(2) In the absence of an agreement under subsection (1) the arbitrator shall determine the time for the submission of a statement of claim and a defence.

(3) The claimant shall state

(a) the claim and the facts that support the claim;

(b) the points in issue for resolution; and

(c) the relief sought.

(4) The respondent shall state in the defence the particulars of its case.

(5) The parties may submit their statements together with documents considered relevant to the proceedings or provide references to other documents or other evidence intended for production at the proceedings.

(6) Unless otherwise agreed by the parties, a party may amend or add to the particulars of claim or defence submitted, except that the arbitrator may refuse an amendment or addition on the ground that it is inappropriate to allow the amendment or addition because there has been undue delay on the part of the party.

(7) A party may submit a counterclaim or defence to counterclaim and the arbitrator shall in consultation with the parties determine the applicable period for doing so.

### **The arbitration hearing**

**34.** (1) An arbitrator shall give the parties notice of the date of hearing.

(2) A party shall before the hearing give the arbitrator and the other party the personal particulars of witnesses that the party intends calling and the substance of the testimony of each witness.

(3) A hearing begins with the

(a) recording of the date, time and place of hearing;

- (b) recording the presence of the arbitrator, the parties and their representatives, if any; and
  - (c) receiving into the record the claim, defence, counterclaim and the answer as applicable.
- (4) The arbitrator may at the beginning of the hearing ask for opening statements from the parties to clarify the issues involved in the arbitration.
- (5) Except as otherwise agreed by the parties or provided by law, the arbitrator shall ensure the confidentiality of the arbitration.
- (6) An arbitrator has the authority
  - (a) to exclude a witness who is not a party from the hearing; and
  - (b) to determine whether a person who is neither a witness nor a party should attend the hearing.
- (7) Unless otherwise agreed by the parties, the hearing of the arbitration proceeding shall be private.
- (8) Unless otherwise agreed by the parties, the arbitrator shall determine the time within which action under subsections (1) and (2) shall occur.
- (9) Subject to the discretion of an arbitrator to vary the order of presentation, the claimant shall first present evidence in support of the claimant's claim and this shall be followed by the respondent.
- (10) Except the parties otherwise agree or the arbitrator otherwise orders, a claim, a notice or any written communication may be served
  - (a) personally on a party; or
  - (b) by mail, courier, facsimile transmission, telex, telegram or other form of written electronic communication addressed to the party or its representative at its last known address.
- (11) Unless otherwise agreed by the parties, the arbitrator shall decide whether to hold oral hearing for the presentation of evidence or for argument or whether the proceedings are to be conducted on the basis of documents and other materials.
- (12) Despite subsection (11), the arbitrator shall at the request of a party at any point in the proceedings, hold oral hearing unless the parties have agreed that there should be no oral hearing.
- (13) A party shall be given sufficient advance notice of any hearing and an opportunity to inspect document and other property relevant to the dispute.
- (14) Statements, documents or other information supplied to the arbitrator and applications made to the arbitrator by one party shall be communicated by the party to the other party.

### **Taking of evidence in presence of parties**

- 35.** (1) Except where a party is absent without good cause or has waived the right to be present, evidence shall be taken in the presence of the arbitrator and the parties.
- (2) Evidence of a witness may be presented by affidavit and the arbitrator may admit that evidence, after considering any objection raised against its admission.
- (3) Where evidence by affidavit or a witness statement is admitted, a party may cross examine the deponent or the witness who presented that evidence.



(4) An arbitrator shall in taking evidence take into account applicable principles of legal privilege.

### **Filing of documents and other evidence after hearing**

36. (1) An arbitrator may direct or parties may agree, that documents or other evidence should be submitted to the arbitrator after the hearing.

(2) Documents or other evidence in respect of which there is an agreement or direction under subsection (1) may be submitted to the Centre or the appointing authority for transmission to the arbitrator.

### **Notice of investigation or inspection**

37. (1) An arbitrator who decides to conduct an inspection or investigation in connection with the arbitration shall give notice to the parties stating the date and time of the inspection or investigation.

(2) A party may attend an inspection or investigation.

(3) Whether or not a party attends an inspection or investigation, the arbitrator shall present a report to the party and afford the party an opportunity to comment on the report.

### **Interim reliefs**

38. (1) An arbitrator may at the request of a party grant any interim relief the arbitrator considers necessary for the protection or preservation of property.

(2) An interim relief may be in the form of an interim award and the arbitrator may require the payment of cost for such a relief.

(3) The arbitrator may apportion costs related to applications for interim relief in an interim award or in the final award.

### **Powers of the High Court to support arbitral proceedings**

39. (1) Unless otherwise agreed by the parties, the High Court has power in relation to an arbitral proceedings to make an order

(a) for the taking of evidence of witnesses;

(b) for the preservation of evidence;

(c) in respect of the determination of any question or issue affecting any property right which is the subject of the proceedings or in respect of which any question in the proceedings arise

(i) for the inspection, photographing, preservation, custody or detention of property; or

(ii) for the taking of samples from or the observation of an experiment conducted upon, a property;

and for that purpose authorizing any person to enter any premises in the possession or control of a party to the arbitration;

(d) for the sale of any goods the subject of the proceedings;

(e) for the granting of an interim injunction or the appointment of a receiver.

(2) Where the case is one of urgency, the Court may, on the application of a party to the arbitral proceedings, make orders as it considers necessary for the purpose of preserving evidence or assets.

(3) If the case is not one of urgency, the Court shall act only where the application to the Court is upon notice to the other party and to the arbitrator and is made with the permission of the arbitrator or is supported by an agreement in writing of the other party.

(4) In any case, the Court shall act if the arbitrator or other institution or person vested by the parties with power in that regard, is unable for the time being to act effectively.

(5) If the Court so orders, an order made by it under this section shall cease to have effect in whole or in part upon a decision to that effect by the arbitrator or other institution or person vested with power to act in relation to the subject matter of the order.

(6) Leave of the Court is required for any appeal from a decision of the Court under this section.

### **Determination of preliminary point of law**

**40.** (1) Unless otherwise agreed by the parties, the High Court may, on an application on notice to the other party by a party to arbitral proceedings, determine any question of law that arises in the course of the proceedings if the Court is satisfied that the question substantially affects the rights of the other party.

(2) The application shall identify the question of law to be determined, and shall state the grounds which requires that the question should be decided by the Court.

(3) Unless otherwise agreed by the parties, the arbitrator may continue the arbitral proceedings and make an award while the application to the Court under this section is pending.

(4) The decision of the Court on the question of law shall be treated as a judgment of the Court for the purpose of an appeal; except that no appeal lies without the leave of the Court, which leave shall not be given unless the Court considers that the question is one of importance or is one which for some other special reason should be considered by the Court of Appeal.

### **Mode and substance of evidence by witness**

**41.** (1) The arbitrator may determine the manner in which witnesses are examined.

(2) A witness may only offer evidence that is relevant and material to the dispute.

(3) A witness must offer evidence as the arbitrator considers necessary for the understanding and determination of the dispute.

(4) The arbitrator shall be the judge of relevance and materiality of evidence and shall conform to the rules of natural justice in that regard.

### **Representation**

**42.** (1) Unless otherwise agreed by the parties, a party may be represented by counsel or any other person chosen by the party.

(2) Unless a claim or an answer is filed by a representative, a party who intends to be represented shall give notice stating the name and address of the representative to the other party at least seven days before the commencement of the arbitral proceedings.

### **Appointment of expert**

**43.** (1) The arbitrator may appoint an independent expert to report to the arbitrator in writing on issues specified by the arbitrator and this shall be communicated to both parties.

(2) A party shall for this purpose

- (a) provide relevant information; and
- (b) produce for inspection, any relevant document or material that the expert may require.

(3) The arbitrator shall settle any dispute between the parties and the expert as to the relevance of any information or material demanded by the expert.

(4) The arbitrator shall send a copy of the expert's report to each party and give an opportunity to each party to comment in writing on the report.

(5) The arbitrator shall give an opportunity to the parties to

- (a) cross examine the expert at the hearing; and
- (b) call their experts to testify on the subject of the report and the evidence of the expert appointed by the arbitrator.

### **Postponement of hearing**

**44.** (1) An arbitrator may postpone a hearing

- (a) at the arbitrator's own instance; or
- (b) at the request of a party who gives sufficient reason.

(2) The arbitrator shall postpone a hearing if the parties agree on a postponement.

(3) If a party without sufficient reason fails to take a required step in the proceedings or to give evidence, the arbitrator may proceed with the arbitration, and on the evidence before it, make an award.

### **Closing of hearing**

**45.** (1) An arbitrator may declare a hearing closed after specifically inquiring from the parties whether they have any further evidence to give and the parties have answered in the negative.

(2) If closing statements are to be filed, a hearing shall be declared closed as of the last date for the submission of the statements.

(3) If a document is to be filed and the date for the filing of the document is after the date for the submission of statements, the last date for the filing of the document shall be the date of the closing of the hearing.

### **Re-opening of hearing**

**46.** (1) An arbitrator may on application by a party or for a reason which the arbitrator considers appropriate, re-open the hearing at any time before an award is made.

(2) A hearing shall not be re-opened without the agreement of the parties for an extension of time, if re-opening the hearing will prevent the making of the award within the time specified in the arbitration agreement or the time agreed on by the parties for making of an award.

(3) Where the arbitration agreement or the parties do not specify the time for making an award and a hearing is re-opened, the arbitrator shall make an award within thirty days of the closing of the re-opened hearing.

### **Settlement before conclusion of arbitration**

**47.** (1) In an arbitral proceeding the arbitrator may encourage settlement of the dispute with the agreement of the parties.

(2) The arbitrator may for the purposes of subsection (1), use mediation or other procedures at any time during the arbitral proceedings.

(3) If during the proceedings the parties settle the dispute, the arbitrator shall terminate the proceeding and with the agreement of the parties, record the settlement in the form of an arbitral award on agreed terms.

(4) An arbitral award on agreed terms shall contain in substance the terms of an arbitral award provided for under section 49.

### **Rules for the award**

**48.** (1) An arbitrator shall decide the dispute

- (a) in accordance with the law chosen by the parties as applicable to the substance of the dispute, or
- (b) in accordance with such other considerations as are agreed by the parties or determined by the arbitrator.

(2) For this purpose the choice of the law of a country shall be understood to refer to the substantive laws of that country and not conflict of laws rules.

(3) Where or to the extent that no law has been chosen or agreed on, the arbitrator shall apply the law determined by the conflict of laws rules which the arbitrator considers applicable.

(4) In disputes relating to contract, the arbitrator shall apply the terms of the contract taking into consideration the usages of the trade to which the contract relates.

(5) Where there are three or more arbitrators any award or decision of the tribunal shall be made by majority of the arbitrators.

(6) A monetary award shall be in the currency of the contract unless the arbitrator considers another currency more appropriate.

(7) The arbitrator may grant the appropriate pre-award or post-award relief at simple or compound interest under the terms of the contract and the applicable law.

(8) Subsection (6) does not apply to damages awarded to compensate for conduct of bad faith or for time wasting.

### **Form and content of arbitral award**

**49.** (1) The parties are free to agree on the form of the award and in the absence of such an agreement this section shall apply.

(2) The award shall be in writing.

(3) The arbitrator shall

- (a) sign the award;
- (b) state the date and place where the award was made; and
- (c) except the parties otherwise agree, state in writing the reasons for the award.

(4) Where there is more than one arbitrator the signatures of the majority of the arbitrators shall be sufficient where the reason for the omission of the signatures of some of the arbitrators is stated.

(5) A signed copy of the award shall be delivered to each party.

(6) The mode of payment and rate of interest on any sum where applicable shall be determined by the arbitrator.

(7) Unless the parties otherwise agree, the award shall not be made public without the consent of the parties.

(8) An arbitral award may be registered with the High Court, or other institution as the parties may agree upon.

### **Scope of award**

**50.** An arbitrator may within the scope of the arbitration agreement grant any relief that the arbitrator considers just and equitable including specific performance.

### **Assessment of fees and compensation**

**51.** The arbitrator shall assess the arbitration fees, expenses and compensation in the award.

### **Effect of award**

**52.** Subject to the right of a party to set aside an award under section 58 of this Act, an arbitration award is final and binding as between the parties and any person claiming through or under them.

### **Correction of or addition to award**

**53.** The arbitrator, at the request of a party or on the arbitrator's own volition, may within twenty-eight days of delivering an award or such longer period as the parties may agree on, upon giving fourteen days notice to the parties

- (a) correct any clerical, typographical, technical or computation error in the award; and
- (b) make an additional award in respect of a claim presented to the arbitrator but omitted from the award.

### **Liability and waiver**

**54.** (1) Except for the consequences of deliberate wrong doing, neither an appointing authority nor an arbitrator is liable for any act or omission in connection with an arbitration.

(2) A party's right to arbitration is not waived because the party has initiated judicial proceedings in relation to the subject matter of the arbitration.

(3) An appointing authority or the arbitrator is not a necessary party in a judicial proceeding relating to an arbitration.

### **Expenses**

**55.** (1) A party shall pay the expenses of a witness called by the party.

(2) Unless the parties otherwise agree or the arbitrator includes an expense in the award against a party, all expenses of the arbitration shall be paid for equally by the parties.

### **Power to withhold award in case of non-payment**

**56.** (1) An arbitrator may refuse to deliver an award to the parties until there is full payment of the fees and expenses of the arbitrator.

(2) If the arbitrator refuses on the ground specified in subsection (1) to deliver an award, a party to the proceedings may, upon notice to the other party and the arbitrator, apply to the High Court, which may, order that

- (a) the arbitrator shall deliver the award on the payment into Court by the applicant of the fees and expenses demanded or such amount as the Court may specify;
- (b) the amount of the fees and expenses properly payable shall be determined by such means and upon such terms as the Court may direct; and
- (c) out of the money paid into Court there shall be paid out such fees and expenses as may be found to be properly payable to the arbitrator and the balance of the money, if any, shall be paid out to the applicant.

(3) For the purposes of this section, the amount of fees and expenses properly payable is the amount the applicant is liable to pay under section 62 or any agreement that relates to the payment of the arbitrator.

(4) No application to the Court may be made where there is an available arbitral process for an appeal against or review of the amount of the fees or expenses demanded.

(5) References in this section to arbitrator include an arbitrator who has ceased to act.

(6) The provisions of this section also apply to any arbitrator or an appointing authority with powers in relation to the delivery of the arbitrator's award and for that purpose the references to the fees and expenses of the arbitrator shall be construed as including the fees and expenses of that appointing authority.

(7) The leave of the Court is required for an appeal from a decision of the Court under this section.

#### *Powers of the High Court in relation to award*

#### **Enforcement of the award**

**57.** (1) An award made by an arbitrator pursuant to an arbitration agreement may, by leave of the High Court, be enforced in the same manner as a judgment or order of the Court to the same effect.

(2) Where leave is so given, judgment may be entered in terms of the award.

(3) Leave to enforce an award shall not be given where, or to the extent, that a person against whom the award is sought to be enforced shows that the arbitrator lacked substantive jurisdiction to make the award.

#### **Challenge of award**

**58.** (1) An arbitral award may subject to this Act be set aside on an application by a party to the arbitration.

(2) The application shall be made to the High Court and the award may be set aside by the Court only where the applicant satisfies the Court that

- (a) a party to the arbitration was under some disability or incapacity;
- (b) the law applicable to the arbitration agreement is not valid;
- (c) the applicant was not given notice of the appointment of the arbitrator or of the proceedings or was unable to present the applicant's case;
- (d) the award deals with a dispute not within the scope of the arbitration agreement or outside the agreement except that the Court shall not set aside any part of the award that falls within the agreement;
- (e) there has been failure to conform to the agreed procedure by the parties;

(f) the arbitrator has an interest in the subject matter of arbitration which the arbitrator failed to disclose.

(3) The Court shall set aside an arbitral award where it finds that the subject-matter of the dispute is incapable of being settled by arbitration or the arbitral award was induced by fraud or corruption.

(4) An application to set aside an award may not be made after three months from the date on which the applicant received the award unless the Court for justifiable cause orders otherwise.

(5) On hearing the applicant, the Court may make an order as is just in the circumstances of the case.

(6) An appeal from the Court lies to the Court of Appeal.

### **Enforcement of foreign awards**

59. (1) The High Court shall enforce a foreign arbitral award if it is satisfied that

- (a) the award was made by a competent authority under the laws of the country in which the award was made;
- (b) a reciprocal arrangement exists between the Republic of Ghana and the country in which the award was made; or
- (c) the award was made under the international Convention specified in the First Schedule to this Act or under any other international convention on arbitration ratified by Parliament; and
- (d) the party that seeks to enforce the award has produced
  - (i) the original award or has produced a copy of the award authenticated in the manner prescribed by the law of the country in which it was made;
  - (ii) the agreement pursuant to which the award was made or a copy of it duly authenticated in the manner prescribed by the law of the country in which it was made or in any other manner as may be sufficient according to the laws of the Republic of Ghana; and
- (e) there is no appeal pending against the award in any court under the law applicable to the arbitration.

(2) A party who seeks to enforce a foreign award and who relies on a document which is not in the English Language, shall produce a certified true translation of that document in English to the Court.

(3) Despite subsection (1) the court shall not enforce a foreign award if

- (a) the award has been annulled in the country in which it was made;
- (b) the party against whom the award is invoked was not given sufficient notice to enable the party present the party's case;
- (c) a party, lacking legal capacity, was not properly represented;
- (d) the award does not deal with the issues submitted to arbitration; or
- (e) the award contains a decision beyond the scope of the matters submitted for arbitration.

### **Expedited arbitration proceedings**

**60.** Parties to a dispute in respect of which there is an arbitration agreement may agree to the resolution of the dispute by the Centre through expedited arbitration proceedings or by the adoption by the arbitrator of the Expedited Arbitration Proceedings Rules of the Centre set out in the Third Schedule to this Act.

### **Modification of Centre Rules**

**61.** An agreement by the parties to apply the rules of the Centre to their dispute is subject to modifications as the parties may agree upon in writing.

### **Effect of expedited proceedings**

**62.** An award made in expedited arbitration proceedings shall have the same effect as an arbitration award made under Part I of this Act.

## **PART TWO—MEDIATION OF DISPUTES**

### **Submission to mediation**

**63.** (1) A party to any agreement may with the consent of the other party submit any dispute arising out of that agreement to mediation by an institution or a person agreed on by the parties.

(2) A submission to mediation may be made by writing, telephone, or other form of verbal communication, fax, telex, e-mail or any other electronic mode of communication and shall briefly state the nature of the dispute.

(3) A submission to mediation through telephone, or any other verbal mode of communication shall, unless the parties agree otherwise, be confirmed in writing and shall state the names, addresses including e-mail addresses and telephone numbers of the parties and in brief the nature of the dispute.

(4) Mediation proceedings commence when the other party accepts the invitation for mediation.

(5) An acceptance of an invitation for mediation may be by a letter, telephone, or other form of verbal communication, fax, telex, or e-mail or other mode of electronic communication.

(6) An acceptance by telephone or any other verbal means shall be confirmed in writing but a failure to confirm an acceptance in writing shall not invalidate the proceedings.

(7) Failure by the other party to accept the invitation to mediation within fourteen days after receipt of the invitation or within the period of time specified in the invitation shall be considered to be a rejection of the invitation to mediation.

### **Reference to mediation by court**

**64.** (1) A court before which an action is pending may at any stage in the proceedings, if it is of the view that mediation will facilitate the resolution of the matter or a part of the matter in dispute, refer the matter or that part of the matter to mediation.

(2) A party to an action before a court may, with the agreement of the other party and at any time before final judgment is given, apply to the court on notice to have the whole action or part of the action referred to mediation.

(3) A reference under subsections (1) or (2) shall state

- (a) the nature of the dispute;
- (b) the monetary value of the claim, if any;



- (c) the reasons for the reference; and
- (d) the remedy sought

and shall have attached copies of the pleadings and any other documents the court considers relevant.

(4) A reference under this section shall serve as a stay of proceedings of the court action.

(5) Where a reference leads to settlement of the dispute or part of the dispute the settlement shall be

- (a) drawn up and filed in the court;
- (b) recorded by the court as a judgment of the court; and
- (c) enforced by the court as its judgment.

(6) Where the reference does not lead to a settlement, the court shall continue with the proceedings from the point where the reference was made.

(7) A reference by a court shall specify the time within which a report on the reference shall be submitted to the court.

### **Number of mediators**

**65.** (1) Unless the parties otherwise agree, there shall be one mediator.

(2) Where there is more than one mediator, the mediators shall act jointly.

### **Appointment of mediator**

**66.** (1) The parties to a mediation may appoint any person or institution the parties consider acceptable to serve as a mediator.

(2) Parties may request the assistance of a suitable institution or person in the appointment of a mediator and may in so doing request the institution or person

- (a) to recommend the names or provide a list of suitable persons to serve as mediator; or
- (b) to conduct the mediation.

(3) Parties to a mediation may adopt the Mediation Rules in the Fourth Schedule to this Act.

### **Mediator with interest**

**67.** (1) In recommending a person to be a mediator, an institution or person shall have regard to the independence and impartiality of that person, and take into consideration the background of the parties.

(2) An institution or person that is requested to recommend a mediator shall not recommend a person to serve as a mediator if that person has a financial or personal interest in the outcome of the dispute.

### **Disclosure by mediator**

**68.** (1) A person appointed a mediator shall before accepting the appointment, disclose any circumstance relating to that person that may

- (a) create a likelihood of bias; or
- (b) affect the conduct of the mediation.

(2) A mediator shall promptly disclose to the parties any circumstances that arises during the mediation which is likely to affect the

- (a) impartiality of the mediator; or
- (b) conduct of the mediation.

(3) Parties to a mediation may replace a mediator who makes a disclosure under subsection (1).

#### **Termination of appointment for delay**

69. The parties may replace a mediator who without reasonable cause fails to

- (a) start work within the period agreed by the parties; or
- (b) operate within the ground rules of the mediation.

#### **Filling of vacancy in mediation**

70. The parties may appoint another mediator to replace a mediator who is unable to perform the functions of a mediator.

#### **Representation in mediation**

71. (1) A party to a mediation may be represented by a lawyer, an expert or any other person chosen by the party.

(2) A party shall communicate in writing to the mediator and the other parties the name, address and the extent of the authority of any representative within seven days of the representative's appointment.

#### **Date, time and place of mediation**

72. (1) A mediator in consultation with the parties shall determine the date and time of each mediation session.

(2) Subject to the mediator choosing a convenient place, the parties shall determine the place for the mediation.

#### **Identification of issues in dispute**

73. (1) Not later than eight days before the first mediation session or within such period of time as the parties may mutually agree upon, each party shall present to the mediator and the other parties a memorandum setting out the party's position with regard to the issues which require resolution.

(2) The mediator may request each party to submit a written statement of that party's position and the facts and grounds in support of that position, supplemented by any documents and other evidence that the party considers appropriate.

(3) At any stage of the mediation proceedings, the mediator may request a party to submit additional information as the mediator considers necessary.

#### **Powers of mediator**

74. (1) A mediator shall in an independent and impartial manner do everything necessary to help the parties to satisfactorily resolve their dispute.

(2) A mediator may conduct joint or separate meetings with the parties and make suggestions to facilitate settlement.

(3) A mediator may where necessary and if the parties agree to pay the expenses, obtain expert advice on a technical aspect of the dispute.

(4) A request for the services of an expert may be made by the mediator or by one party with the consent of the other party.

(5) A mediator shall be guided by principles of objectivity, fairness and justice, and shall give consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.

(6) A mediator may conduct the mediation proceedings in a manner that the mediator considers appropriate, but shall take into account the wishes of the parties including any request by a party that the mediator hear oral statements, and the need for a speedy settlement of the dispute.

(7) A mediator may end the mediation whenever the mediator is of the opinion that further mediation between the parties will not help to resolve the dispute between the parties.

### **Administrative assistance**

75. In order to facilitate the conduct of mediation proceedings, the parties, or the mediator with the consent of the parties, may arrange for administrative assistance by a suitable institution or individual.

### **Communication between mediator and parties**

76. The mediator may invite the parties to meet the mediator and may communicate with them orally or in writing and may meet or communicate with the parties together or with each of them separately.

### **Attendance at mediation**

77. Except where the parties agree and the mediator consents, a person who is not a party to the mediation shall not attend a mediation session.

### **Disclosure of information**

78. Except where a party gives information to the mediator subject to a condition of confidentiality, when the mediator receives factual information concerning the dispute from a party, the mediator may disclose the substance of that information to the other party in order that the other party may have the opportunity to present any explanation which that other party considers appropriate.

### **Confidentiality of mediation**

79. (1) A record, a report, the settlement agreement, except where its disclosure is necessary for the purpose of implementation and enforcement, and other documents required in the course of mediation shall be confidential and shall not be used as evidence or be subject to discovery in any court proceedings.

(2) A mediator shall not disclose information given in the course of the mediation to a person who is not a party to the mediation without the consent of the parties.

(3) Without limiting the effect of subsection (1) a party to a mediation shall not rely on

- (a) the record of the mediation;
- (b) statement made at the mediation; or
- (c) any information obtained during the mediation

as evidence in court proceedings.

### **End of mediation**

**80.** (1) A mediation ends when

- (a) the parties execute a settlement agreement;
- (b) the mediator terminates the mediation proceedings for non-payment of a deposit under section 88.
- (c) the mediator after consultation with the parties makes a declaration to the effect that further mediation is not worthwhile;
- (d) the parties jointly address a declaration to the mediator to the effect that the mediation is terminated; or
- (e) a party makes a declaration to the mediator and the other party to the effect that the mediation is terminated.

(2) A declaration under subsection (1) may be in writing or oral but where a declaration is not written the mediator shall record the declaration.

### **Settlement agreement**

**81.** (1) Where it appears to the mediator that there exist elements of a settlement which may be acceptable to the parties, the mediator may formulate the terms of a possible settlement and submit them to the parties for their considerations and after receiving the observations of the parties, the mediator may reformulate the terms of a possible settlement in the light of the observations.

(2) If the parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement and if requested by the parties, the mediator may draw up, or assist the parties in drawing up, the settlement agreement.

(3) When the parties sign the settlement agreement, the parties shall be deemed to have agreed that the settlement shall be binding on the parties and persons claiming under them respectively.

(4) The mediator shall authenticate the settlement agreement and furnish a copy of the settlement agreement to each of the parties.

### **Status and effect of settlement agreement**

**82.** Where the parties agree that a settlement is binding, the settlement agreement has the same effect as if it is an arbitral award under section 52.

### **Resort to arbitral or judicial proceedings**

**83.** The parties shall not initiate, during the mediation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject-matter of the mediation proceedings.

### **Role of mediator in other proceedings**

**84.** Unless otherwise agreed by the parties or required by law,

- (a) the mediator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceeding in respect of a dispute that is the subject of the mediation proceedings; and

- (b) the mediator shall not be presented by the parties as a witness in any arbitral or judicial proceedings arising out of or in connection with the dispute mediated upon.

### **Admissibility of evidence in other proceedings**

**85.** The parties shall not rely on or introduce as evidence in arbitral or judicial proceedings, whether or not the proceedings relate to the dispute that is the subject of the mediation proceedings,

- (a) views expressed or suggestions made by the other party in the mediation in respect of a possible settlement of the dispute;
- (b) admissions made by the other party in the course of the mediation proceedings; or
- (c) the fact that the other party had indicated that party's willingness to accept a proposal for settlement made by the mediator.

### **Exclusion of liability**

**86.** (1) A mediator shall not be a party in any court proceedings relating to a mediation under this Act in which the mediator participated.

(2) A mediator is not liable for any act or omission in the discharge of the functions of a mediator unless the mediator is proven to have acted in bad faith.

### **Mediation expenses**

**87.** Unless the parties agree otherwise, the parties shall equally pay the expenses of the mediation including the fees and expenses of

- (a) the mediator;
- (b) any administrative assistance received;
- (c) experts called; and
- (d) any expenses incurred in connection with the mediation proceedings and settlement agreement.

### **Deposits**

**88.** (1) The mediator may direct each party to deposit an equal amount as an advance for the expenses of the mediation referred to in section 87 which the mediator expects will be incurred.

(2) During the course of mediation proceedings, the mediator may direct supplementary deposits in an equal amount from each party.

(3) If the required deposits are not paid in full by both parties within thirty days of the direction, the mediator may suspend the proceedings or may make a written declaration of termination of the proceedings to the parties, effective on the date of that declaration.

(4) On termination of the mediation proceedings, the mediator shall render an account to the parties of the deposits received and shall return any unexpended balance to the parties.

## **PART THREE—CUSTOMARY ARBITRATION**

### **Submission to customary arbitration**

**89.** (1) A party to a dispute may submit the dispute to customary arbitration under this Part.

(2) Except otherwise ordered by a court and subject to any other enactment in force, a person shall not

(a) submit a criminal matter for customary arbitration; or

(b) serve as an arbitrator in a criminal matter.

(3) A person who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding two hundred and fifty penalty units or a term of imprisonment not exceeding twelve months or to both.

(4) A conviction of a person under subsection (3) is not a bar to prosecution for an offence under the Criminal Offences Act, 1960 (Act 29) to which that person is liable in respect of the matter submitted for customary arbitration.

#### **Agreement to submit to customary arbitration**

**90.** (1) A report of a dispute by a party to that dispute to a qualified person as provided in section 92, followed by a request to that qualified person to help resolve the dispute shall constitute a submission to customary arbitration.

(2) A customary arbitrator to whom a submission for customary arbitration is made by a party shall inform the other party of the submission and invite that other party and the party who made the submission to pay a fee or a token for the arbitration.

(3) The payment by the parties of the arbitration fee or token demanded by the arbitrator in customary arbitration constitutes,

(a) consent to submit to customary arbitration; and

(b) the appointment of the arbitrator.

(4) Customary arbitration shall not commence where the other party rejects the invitation by failing to pay the fee or token demanded by the arbitrator.

(5) Failure by the other party to accept the invitation within twenty-one days of receipt of the invitation or within a period of time specified by the arbitrator shall be deemed to be a rejection of the invitation.

(6) A person shall not be forced or coerced by another person, institution or authority to submit to customary arbitration.

#### **Reference by court to customary arbitration**

**91.** A court may with the consent of parties order a dispute pending before it to be submitted by the parties to customary arbitration.

#### **Qualification of customary arbitrator**

**92.** (1) A person chosen by one of the parties and accepted by the other party or a person agreed on by the parties to a dispute qualifies to be an arbitrator.

(2) The Centre shall as far as practicable prepare and maintain at its offices a list of customary arbitrators for the area which the office of the Centre oversees.

#### **Rules of customary arbitration**

**93.** (1) A customary arbitrator shall apply the rules of natural justice and fairness and is not obliged to apply any legal rules of procedure in the arbitration.

(2) The parties may agree in consultation with the arbitrator to,

- (a) conduct the arbitration under the auspices of the Centre; or
- (b) adopt the Rules of arbitration of the Centre subject to such modifications as the parties and the arbitrator consider appropriate.

### **Registration of dispute with the Centre**

**94.** (1) Where parties agree to conduct a customary arbitration under the auspices of the Centre, they shall register the dispute with the nearest local office of the Centre.

(2) For the purpose of subsection (1) the Centre shall as far as practicable have offices attached to Unit Committees and District Assemblies.

(3) A registration of a dispute under this Part shall indicate

- (a) the names and addresses of the parties and the arbitrator; and
- (b) the nature of the dispute.

(4) The parties are free to appoint the person who should be the arbitrator.

### **Number of customary arbitrators**

**95.** Unless the parties agree otherwise, there shall be one customary arbitrator for customary arbitration proceedings.

### **Appointment of customary arbitrator by Centre**

**96.** (1) Parties to a dispute may agree that the Centre should appoint the arbitrator.

(2) Where parties agree as provided under subsection (1), the parties shall go to the nearest Office of the Centre; register their dispute and pay the required fee upon which the Centre shall appoint an arbitrator from the register of arbitrators for that area for the parties.

### **Notice of appointment of customary arbitrator**

**97.** Where parties appoint an arbitrator under section 101 (4) or the Centre appoints the arbitrator under section 103 (1), the Centre shall within fourteen days after that appointment inform the arbitrator of the appointment.

### **Disclosure by a customary arbitrator**

**98.** (1) A person requested to be a customary arbitrator shall disclose any circumstance likely to give reasonable cause to doubt as to the independence or impartiality of that person.

(2) A customary arbitrator's obligation to disclose under subsection (1) subsists throughout the arbitral proceedings.

### **Challenge of a customary arbitrator**

**99.** (1) A customary arbitrator may be challenged if

- (a) circumstances exist that give rise to reasonable cause to doubt as to the arbitrator's independence or impartiality; or
- (b) the arbitrator does not possess a qualification agreed on by the parties.

(2) A party may not challenge an arbitrator who that party has appointed or in whose appointment that party participated except for reasons which that party becomes aware of subsequent to the appointment.

(3) Subject to subsection (4), parties may agree on a procedure for challenging a customary arbitrator.

(4) Unless the parties in accordance with subsection (3) agree otherwise, a party who intends to challenge a customary arbitrator shall within seven days of appointment of the arbitrator or after becoming aware of the grounds of the challenge, inform the other party and the arbitrator of the challenge and the reasons for the challenge.

(5) A customary arbitrator who is challenged shall step down and the party who appointed the challenged arbitrator shall appoint another arbitrator to replace the challenged arbitrator.

### **Revocation of customary arbitrator's appointment**

**100.** (1) The parties to a customary arbitration may agree on the circumstances under which the appointment of a customary arbitrator may be revoked, and they may in any case acting jointly, revoke the appointment.

(2) Without limiting subsection (1), the parties may revoke the appointment of a customary arbitrator where

- (a) there is sufficient reason to doubt the impartiality of the arbitrator;
- (b) the arbitrator is physically or mentally incapable of conducting the proceedings or there is reasonable cause to doubt as to the arbitrator's capability to conduct the proceedings; or
- (c) the arbitrator has refused or failed to
  - (i) conduct the arbitral proceedings properly; or
  - (ii) use reasonable despatch in conducting the proceedings or making the award.

### **Resignation of customary arbitrator**

**101.** (1) A customary arbitrator may resign from the office of an arbitrator at any time during the arbitration, except that an arbitrator who resigns shall refund the remainder of any fees paid as may be agreed on by the parties and the arbitrator.

(2) Any dispute as to the refund of fees upon the resignation of a customary arbitrator shall be settled by

- (a) a District Court on an application to that District Court by the arbitrator or any of the parties; or
- (b) any person the customary arbitrator and the parties agree on and in the case where that person fails to settle the dispute, the dispute may be referred to the District Court.

### **Death of customary arbitrator**

**102.** The authority of a customary arbitrator ceases on the death of the arbitrator.

### **Filling of vacancy in customary arbitration**

**103.** (1) Where the position of a customary arbitrator becomes vacant by reason of revocation, resignation or death, the parties may appoint another person to fill the vacancy.

(2) Where the customary arbitration proceedings are

- (a) recorded, the parties may in consultation with the new arbitrator determine whether the proceedings of the previous arbitration should be adopted; or
- (b) not recorded, the customary arbitration shall start afresh.

### **Place, date and time of first customary arbitration session**



**104.** Where the arbitration is conducted under the auspices of the Centre or where the Centre appoints the arbitrator, the arbitrator shall, within twenty-one days after being informed of the appointment, inform the parties and the Centre of the place, date and time of the first arbitration session and shall determine the place, date and time of subsequent arbitration session and inform the parties accordingly.

#### **Withdrawal from customary arbitration**

**105.** A party shall not withdraw from customary arbitration.

#### **Language of proceedings**

**106.** The parties may choose the language for the proceedings.

#### **Time for customary award**

**107.** Except the parties otherwise agree in consultation with the arbitrator or the complexity of the issue requires, an award shall be made within twenty-one days after the first hearing.

#### **Form of customary award**

**108.** Except where a party requests for a written award and pays for the written award or the reference to arbitration is made by a court, the award in a customary arbitration need not be in writing.

#### **Effect of customary award**

**109.** An award in a customary arbitration

- (a) is binding between the parties and a person claiming through and under them; and
- (b) need not be registered in a court to be binding.

#### **Registration of customary award**

**110.** (1) A customary arbitration award may for the purpose of record and enforcement be registered at the nearest District Court, Circuit Court or High Court as appropriate.

(2) A customary arbitration award intended for registration at a court shall be in writing.

#### **Enforcement of customary award**

**111.** An award may be enforced in the same manner as a judgment of the court.

#### **Setting aside customary award**

**112.** (1) A party aggrieved by an award may apply to the nearest District, Circuit or High Court to set aside the award on the grounds that the award

- (a) was made in breach of the rules of natural justice,
- (b) constitutes a miscarriage of justice, or
- (c) is in contradiction with the known customs of the area concerned.

(2) An application under subsection (1) shall be made to the court within three months of the award, and on notice to the other party to the arbitration.

#### **Negotiation for a settlement**

**113.** The provisions on customary arbitration as are appropriate shall apply to the customary dispute settlement procedure known as negotiation for a settlement except that in a negotiation for a settlement,

- (a) the parties do not pay the settlement fees, until the end of the settlement, if they agree with the terms of the settlement;
- (b) the parties may withdraw from the settlement proceedings at any time;
- (c) the parties are not bound to accept the settlement arrived at in the proceedings; and
- (d) the payment of the settlement fees by the parties at the end of the proceedings constitutes acceptance of the settlement and makes the settlement binding on the parties.

#### PART FOUR—ALTERNATIVE DISPUTE RESOLUTION CENTRE

##### **Establishment of Alternative Dispute Resolution Centre**

**114.** (1) There is established by this Act an Alternative Dispute Resolution Centre.

(2) The Centre is a body corporate with perpetual succession and a common seal and may sue or be sued in its corporate name.

(3) The Centre may for the performance of its functions under this Act acquire and hold movable or immovable property, dispose of its property and may enter into a contract or any other transaction.

(4) Where there is a hindrance to the acquisition of property, the property may be acquired for the Centre under the State Property and Contracts Act, 1960 (C.A.6) or the State Lands Act, 1962 (Act 125) and the costs shall be borne by the Centre.

##### **Object and functions of the Centre**

**115.** (1) The object of the Centre is to facilitate the practice of alternative dispute resolution.

(2) For the attainment of its object, the Centre shall

- (a) provide facilities for the settlement of disputes through arbitration, mediation and other voluntary dispute resolution procedures;
- (b) exercise any power for alternative dispute resolution conferred on it by parties to a dispute but shall not be involved in actual resolution of the dispute;
- (c) keep a register of arbitrators and mediators;
- (d) provide a list of arbitrators and mediators to persons who request for the services of arbitrators and mediators;
- (e) provide guidelines on fees for arbitrators and mediators;
- (f) arrange for the provision of assistance to persons as it considers necessary;
- (g) from time to time examine the rules of arbitration and mediation under this Act and recommend changes in the rules;
- (h) conduct research, provide education and issue specialised publications on all forms of alternative dispute resolution,
- (i) set up such regional and district offices of the Centre as the Board considers appropriate;

- (j) register experienced or qualified persons who wish to serve as customary arbitrators and keep a register of customary arbitrators; and
- (k) request the traditional councils to register and keep a register of persons who wish to serve as customary arbitrators.

### **Independence of Centre**

**116.** Subject to the Constitution and unless otherwise provided in this Act, and any other enactment, the Centre shall not be under the direction or control of any person or authority in the performance of its functions.

### **Governing Board of the Centre**

**117.** (1) The Centre shall have a governing Board composed of

- (a) a chairperson who is a lawyer of not less than twelve years standing;
- (b) one member of each of the following, nominated by the respective body,
  - (i) Ghana Chamber of Commerce;
  - (ii) the Ghana Bar Association;
  - (iii) the Ghana Institute of Surveyors;
  - (iv) the Judiciary;
  - (v) Institute of Chartered Accountants; and
  - (vi) a woman nominated by the President;
- (c) one representative of organised labour;
- (d) one representative from industry; and
- (e) the Executive Secretary of the Centre.

(2) The chairperson and members of the Board shall be appointed by the President in accordance with article 70 of the Constitution.

(3) The Board shall perform the functions of the Centre.

### **Tenure of office of members of the Board**

**118.** (1) A member of the Board shall hold office for a period of three years and is eligible for re-appointment but a member shall not hold office for more than two terms in succession.

(2) Subsection (1) does not apply to the Executive Secretary.

(3) A member of the Board may by a thirty day notice resign from office in writing addressed to the President, through the Minister.

(4) A member of the Board who is absent from three consecutive meetings of the Board without sufficient cause ceases to be a member of the Board.

(5) The President may by letter addressed to a member revoke the appointment of that member.

(6) A person who is a member of the Board by virtue of

- (a) a professional qualification held by that person; or
- (b) being an employee of an institution, Ministry, Department, Agency or other body

ceases to be a member of the Board if that person in the case of

- (c) a professional, is disqualified or suspended from practice by an order of the relevant competent authority or for some reason other than voluntary

resignation that person's name is struck off the register of the professional body; or

(d) an employee is no longer employed by the institution, Ministry, Department, Agency or other body.

(7) Where a member of the Board is, for a reasonable cause, unable to act as a member, the Minister shall determine whether the inability would result in the declaration of vacancy.

(8) Where there is a vacancy

(a) under subsection (3), (4), (5), (6) or section 121 (2);

(b) as a result of a declaration under subsection (7); or

(c) by reason of the death of a member,

the Minister shall notify the President of the vacancy and the President shall appoint a person to fill the vacancy.

### **Allowance of members of the Board**

**119.** Members of the Board and members of a Committee of the Board shall be paid allowances approved by the Minister in consultation with the Minister responsible for Finance.

### **Meetings of the Board**

**120.** (1) The Board shall meet at least once every three months for the despatch of business at the times and in the places determined by the chairperson.

(2) The chairperson shall at the request of at least one third of the members of the Board convene an extraordinary meeting of the Board.

(3) The quorum at a meeting of the Board is six members, including the Executive Secretary.

(4) The chairperson shall preside at meetings of the Board and in the absence of the chairperson, a member of the Board elected by the members present from among their number shall preside.

(5) Matters before the Board shall be decided by a majority of the members present and voting and in the event of an equality of votes the person presiding shall have a casting vote.

(6) The Board may co-opt a person to attend its meetings but a co-opted person is not entitled to vote on a matter for decision by the Board.

(7) The proceedings of the Board shall not be invalidated by reason of a vacancy among the members or a defect in the appointment or qualification of a member.

(8) Subject to this section, the Board may determine the procedure for its meetings.

### **Disclosure of interest by Board member**

**121.** (1) A member of the Board or of a committee of the Board who has an interest in a matter under consideration by the Board shall disclose in writing the nature of that interest to the Board or the committee and is disqualified from participating in the deliberations of the Board or the committee in respect of that matter.

(2) A member who contravenes subsection (1) ceases to be a member of the Board or committee.

### **Committees of the Board**

**122.** The Board may establish committees consisting of members of the Board or non-members or both to perform its functions.

#### **Registration of arbitrators and mediators**

**123.** (1) A person with the requisite qualification may apply to register with the Centre as an arbitrator or a mediator.

(2) The Centre shall keep in a register, the name, address and other particulars of a person registered as an arbitrator or mediator by the Centre.

#### **Regional and district offices of the Centre**

**124.** The Centre may have regional and district offices as the Board considers appropriate.

### **PART FIVE—FINANCIAL, ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS**

#### **Establishment of Alternative Dispute Resolution Fund**

**125.** (1) There is established by this Act a Fund to be known as the Alternative Dispute Resolution Fund.

(2) The sources of money for the Fund are

- (a) grants from the Government for the development of alternative dispute resolution;
- (b) charges and fees collected by the Centre in the performance of its functions; and
- (c) donations and gifts from the general public, institutions and organisations.

#### **Objects of the Fund**

**126.** Moneys of the Fund shall be applied for

- (a) education of the general public on alternative dispute resolution;
- (b) research and studies relating to the functions of the Centre;
- (c) human resource development for alternative dispute resolution, and
- (d) any other purposes as the Board in consultation with the Minister may determine.

#### **Management of the Fund**

**127.** (1) The Fund shall be managed by the Board which shall for this purpose include the Controller and Accountant-General or a representative of the Controller and Accountant-General.

(2) Moneys for the Fund shall be paid into a bank account opened by the Board with the approval of the Controller and Accountant-General.

(3) The provisions under sections 132 and 133 of this Act on accounts and audit and annual reports shall apply to the Fund.

#### **Functions of the Board in relation to the Fund**

**128.** (1) The Board shall for the purpose of managing the Fund

- (a) formulate policies to generate money for the Fund;
- (b) determine the allocations to be made towards the objects of the Fund; and
- (c) determine annual targets of the Fund.

(2) The Board may invest a part of the Fund as it considers appropriate in government securities or in a manner as may be approved by the Minister in consultation with the Minister responsible for Finance.

(3) Payments issued from the Fund shall be signed by any two of the following:

- (a) the chairperson of the Board;
- (b) the Executive Secretary; and
- (c) one other member of the Board.

### **Executive Secretary**

**129.** (1) The President shall in accordance with article 195 of the Constitution appoint an Executive Secretary for the Centre.

(2) The Executive Secretary shall hold office on the terms and conditions specified in the letter of appointment.

(3) Subject to the directions of the Board, the Executive Secretary is responsible for the day to day administration of the Centre.

(4) The Executive Secretary shall maintain the register of arbitrators and mediators.

(5) The Executive Secretary shall perform any other functions that the Board may determine.

### **Appointment of other staff**

**130.** (1) The Centre shall have other officers and staff as may be necessary for the effective performance of its functions.

(2) The President shall in accordance with article 195 of the Constitution appoint other members of staff who shall hold office on terms and conditions specified in their letters of appointment.

(3) Other public officers may be transferred or seconded to the Centre.

(4) The centre may engage the services of advisers on the recommendations of the Board.

### **Delegation of power of appointment**

**131.** The President may in accordance with article 195(2) of the Constitution, delegate the power of appointment of public officers under this Act.

### **Accounts and Audit**

**132.** (1) The Centre shall keep books of account and proper records in relation to them in a form approved by the Auditor-General.

(2) The accounts of the Centre shall be audited by the Auditor-General within three months after the end of each financial year.

(3) The Auditor-General shall not later than three months after the receipt of the accounts, audit the accounts of the centre and forward a copy of the audit reports to the Minister.

(4) The financial year of the Centre is the same as the financial year of the Government.

## **Annual reports**

**133.** (1) The Centre shall within one month after the receipt of the audit report submit to the Minister an annual report covering the activities and the operations of the Centre for the year to which the report relates.

(2) The annual report shall include the report of the Auditor-General.

(3) The Minister shall, within one month after the receipt of the annual report submit the report to Parliament with a statement that the Minister considers necessary.

(4) The Centre shall submit to the Minister any other reports which the Minister may require in writing.

## **Regulations**

**134.** The Minister may on the advice of the Board make Regulations by legislative instrument to prescribe for

- (a) conciliation, mediation, arbitration and other voluntary dispute resolution procedures;
- (b) qualifications of persons who wish to be registered as arbitrators and mediators;
- (c) the parameters for the determination of fees of conciliators, mediators and arbitrators;
- (d) research, education and training procedures as well as the standards to be attained in these with respect to all forms of alternative dispute resolution;
- (e) the functions of regional and district offices of the Centre;
- (f) the role of the District Assemblies, Unit Committees and traditional customary institutions in achieving the object of the Centre;
- (g) matters relating to customary arbitration;
- (h) the arbitration rules of the Centre; and
- (i) matters generally to give effect to the provisions of this Act.

## **Interpretation**

**135.** In this Act, unless the context otherwise requires

“Alternative Dispute Resolution” means the collective description of methods of resolving disputes otherwise than through the normal trial process;

“appointing authority” means any person or authority including the Centre in whom parties to an arbitration agreement vest power to take any action for or on behalf of the parties, in relation to the arbitration;

“arbitration” means the voluntary submission of a dispute to one or more impartial persons for a final and binding determination;

“arbitration agreement” means an agreement to submit to arbitration present or future dispute;

“arbitration management conference” means a meeting held between the arbitrator and the parties to the arbitration under section 29 to resolve preliminary issues and set down a guideline for the arbitration;

“award” includes an arbitration award on agreed terms.

“arbitrator” means one or more impartial persons appointed or who can be appointed to offer a final and binding resolution to a dispute;

“arbitral tribunal” means an arbitration consisting of one or more persons;

“Board” means the board of Governors of the Centre referred to in section 117;

“Centre” means the Alternative Dispute Resolution Centre established in section 114;

“conciliation” means the submission by the parties of a dispute which is the subject of an arbitration during the cause of the arbitration to an impartial person who is not the arbitrator to facilitate the resolution of the dispute between the parties;

“conciliator” means an impartial person appointed to preside over a conciliation conference;

“Court” means the High Court;

“customary arbitration” means the voluntary submission of a dispute, whether or not relating to a written agreement for a final binding determination under Part Three of this Act;

“customary arbitrator” means an impartial person appointed or qualified to be appointed as an arbitrator in customary arbitration;

“expedited procedure” means the fast track arbitration procedure referred to in Part II;

“Fund” means the Alternative Dispute Resolution Fund established under section 125;

“mediation” means a nonbinding process under Part Two in which the parties discuss their dispute with an impartial person who assists them to reach a resolution;

“mediator” includes an impartial person appointed or qualified to be appointed to assist the parties to satisfactorily resolve their dispute and employees and persons hired by that person;

“Minister” means the Minister responsible for Justice.

### **Modification of court rules**

**136.** Upon the coming into force of this Act, any existing rules of court on arbitration shall apply subject to the provisions of this Act.

### **Repeals and savings**

**137.** (1) The Arbitration Act, 1961 (Act 38) is repealed.

(2) Despite the repeal of the Arbitration Act, 1961 (Act 38)

(a) any instrument, agreement, Regulations and order made under that Act and in force immediately before the commencement of this Act shall continue to be in force, until otherwise legally altered, and

(b) any action commenced or pending before any court to which Act 38 applies shall continue and be dealt with under this Act.

### **Transitional provisions**

**138.** Any body or association which is not a party to an arbitration agreement but which is responsible for

(a) appointing arbitrators;

(b) setting up arbitration panels or tribunals; or



(c) managing arbitration generally  
in existence before the coming into force of this Act may upon the appointment of the Board of the Centre apply to be affiliated to the Centre.

## **SCHEDULES**

### **FIRST SCHEDULE**

#### **CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS 1958 (NEW YORK CONVENTION)**

*(Section 59 (1)(c))*

The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted at the Headquarters of the United Nations in New York on June 10, 1958.

#### **Article I**

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.
2. The term “arbitral awards” shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.
3. When signing, ratifying or acceding to this Convention, or notifying extension under Article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

## **Article II**

1. Each Contracting State shall recognise an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.
2. The term “agreement in writing” shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.
3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

## **Article III**

Each Contracting State shall recognise arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

## **Article IV**

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:
  - (a) the duly authenticated original award or a duly certified copy thereof;
  - (b) the original agreement referred to in Article II or a duly certified copy thereof.
2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

## **Article V**

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:
  - (a) The parties to the agreement referred to in Article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

- (b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
  - (c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced; or
  - (d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
  - (e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.
2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:
- (a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
  - (b) The recognition or enforcement of the award would be contrary to the public policy of that country.

#### **Article VI**

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V (1)(e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

#### **Article VII**

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.
2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound, by this Convention.

#### **Article VIII**

1. This Convention shall be open until 31 December 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any specialised agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.
2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

#### **Article IX**

1. This Convention shall be open for accession to all States referred to in Article VIII.
2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

#### **Article X**

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.
2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned whichever is the later.
3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

#### **Article XI**

1. In the case of a federal or non-unitary State, the following provisions shall apply:
  - (a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;
  - (b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent states or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent states or provinces at the earliest possible moment;
  - (c) A federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its

constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

#### **Article XII**

1. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.
2. For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

#### **Article XIII**

1. Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.
2. Any State which has made a declaration or notification under Article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.
3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been instituted before the denunciation takes effect.

#### **Article XIV**

A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself bound to apply the Convention.

#### **Article XV**

The Secretary-General of the United Nations shall notify the States contemplated in Article VIII of the following:

- (a) Signature and ratifications in accordance with article VIII;
- (b) Accessions in accordance with article IX;
- (c) Declarations and notifications under articles I, X and XI;
- (d) The date upon which this Convention enters into force in accordance with Article XII;
- (e) Denunciations and notifications in accordance with Article XIII.

#### **Article XVI**

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in Article VIII.

**SECOND SCHEDULE**  
**ALTERNATIVE DISPUTE RESOLUTION CENTRE RULES**  
**ARBITRATION RULES**

*(Section 5(3), 8(2))*

**Application of Rules**

1. (1) Where parties to an agreement agree that a dispute in relation to that agreement be referred to arbitration by the Alternative Dispute Resolution Centre, the dispute shall be settled in accordance with these Rules subject to any modifications of the Rules that the parties may agree upon in writing; except that where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall apply.

(2) Where parties to an existing dispute file with the Centre a written agreement to submit the dispute to arbitration under these Rules or by the Centre, these Rules shall apply subject to any modification agreed on by the parties; except that where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall apply.

**Arbitral tribunal**

2. A sole arbitrator or a panel constituted by the parties for the settlement of a dispute under these Rules shall be called an Arbitral Tribunal.

**Administrator**

3. Where parties agree to arbitration by the Centre, the Centre is the administrator of the arbitration.

**Delegation of administrative duties**

4. The administrative duties of the Centre under these Rules shall be carried out through officers or committees of the Centre.

**Administration by regional, district offices of Centre**

5. The Centre, may assign the administrative function of an arbitration to any of its office in the regions or districts.

6. (1) For the purposes of these Rules, any notice, including a notification, communication or proposal, is received if it is physically delivered to the addressee or if it is delivered at the addressee's habitual residence, place of business or mailing address, or, if none of these can be found after making reasonable inquiry, then at the addressee's last-known residence or place of business and notice is deemed to have been received on the day it is delivered.

(2) A notice required to be given under these Rules may be given by telephone, telex, facsimile, e-mail or any other means of electronic communication.

(3) A notice given through telephone or any other verbal mode permitted under subrule (2) shall be confirmed in writing which shall state the names, addresses (including e-mail addresses) and telephone numbers of the parties.

(4) Failure to confirm a notice in writing under subrule (3) does not invalidate the proceedings.

### **Initiation of arbitration**

7. (1) A party who intends to initiate arbitration proceedings with the Centre (the 'claimant') shall give to the other party (the 'respondent') a notice of arbitration.

(2) The notice of arbitration shall include

- (a) a copy of the arbitration agreement;
- (b) a demand that the dispute be referred to arbitration;
- (c) the names and addresses of the parties;
- (d) a reference to the arbitration clause or the separate arbitration agreement that is invoked;
- (e) a reference to the contract out of or in relation to which the dispute arises;
- (f) the statement of claim, stating the general nature of the claim and an indication of the amount involved, if any;
- (g) the relief or remedy sought; and
- (h) a proposal as to the number of arbitrators if the parties have not previously agreed on the number of arbitrators.

(3) The notice of arbitration may also include

- (a) the proposals for the appointment of an arbitrator, and
- (b) the notification of the appointment of an arbitrator referred to in rule 14.

(4) The claimant shall at the time of service of the notice on the respondent, file 2 copies of the notice at an office of the Centre upon paying the appropriate administrative fee.

(5) Arbitration proceedings commence on the date on which the notice is received by the respondent.

(6) Within seven days after a notice has been filed with the Centre, the Centre shall inform the other party of the filing of the notice.

(7) The respondent shall within fourteen days of being served with a notice under subsection (1), file an answer in duplicate with the Centre and serve the claimant with a copy of the answer.

(8) Where an answer includes a counterclaim, the notice of the counterclaim, the amount involved, if any, and the remedy sought shall be stated in the counterclaim.

(9) A respondent who makes a counterclaim in an answer shall pay the appropriate administrative fee to the Centre.

(10) The failure of a respondent to file an answer within time shall

- (a) be assumed to be a denial of the claim; and
- (b) not stay the arbitration proceedings.

(11) Unless the Centre in consultation with the parties determine otherwise, the Expedited arbitration Procedure provided for under Schedule III of this Act shall be applied

in a case where the total sum claimed, exclusive of interest and arbitration costs, does not exceed US\$100,000 or its equivalent in cedis.

### **Change or amendment of claim**

8. (1) A party who after filing a claim desires to make a new claim or amend the claim shall file the new claim or amended claim with the Centre and serve the other party with a copy.

(2) A party served with a new or amended claim shall within seven days from the date of being served, file an answer with the Centre.

(3) A new claim or an amendment to a claim shall not be made after the appointment of an arbitrator, except with the consent of the arbitrator.

### **Administrative conference**

9. A party or the Centre may before the appointment of an arbitrator request for the holding of an administrative conference with representatives of the Centre and the parties or their representatives to

- (a) organise and expedite the arbitration,
- (b) study and discuss the administrative issues involved in the case,
- (c) determine the most suitable means of appointing an arbitrator, and
- (d) consider mediation as a means of resolving the dispute.

### **Number of arbitrators**

10. (1) The parties may agree on the number of arbitrators and if the parties within fourteen days of the service of the notice of arbitration on the respondent, do not agree on the number of arbitrators, three arbitrators shall be appointed.

(2) Where the arbitration agreement provides for the appointment of an even number of arbitrators

- (a) the arbitrators shall within fourteen days of their appointment appoint an additional arbitrator to be the umpire;
- (b) if the arbitrators are unable to appoint the additional arbitrator within the specified time, the Centre shall appoint the additional arbitrator to be the umpire.

### **Appointment of arbitrators**

11. (1) If the parties in their agreement name an arbitrator or specify a method of appointment of an arbitrator, that designation shall be followed, except that the parties shall provide the Centre with the full names, addresses, nationalities and qualifications of the arbitrators named by them.

(2) If the parties do not name an arbitrator or provide a method for the appointment of an arbitrator, but have provided for the appointment of a sole arbitrator, either party may propose to the other party

- (a) the full names, addresses, nationalities and qualifications of one or more persons, one of whom would serve as the sole arbitrator, or
- (b) that the Centre should appoint the sole arbitrator.



(3) If within fourteen days of a proposal being made under subrule (2)(a) the parties are unable to reach an agreement, the appointment of the sole arbitrator shall be made by the Centre.

(4) Where the arbitration agreement requires the appointment of three arbitrators and the parties have not specified the method of appointment or where the parties have not agreed on the number of arbitrators,

(a) each party shall appoint one arbitrator; and

(b) the appointed arbitrators shall appoint the third arbitrator who shall be the umpire.

(5) Where the arbitrators appointed by the parties fail to appoint an umpire, the umpire shall be appointed by the Centre.

(6) Where under subrule (4), a party who is given notification of appointment of arbitrator does not within fourteen days of the notification appoint an arbitrator and notify the other party of the appointment, that other party shall request the Centre to appoint the second arbitrator.

(7) If the arbitration agreement does not specify a period of time for the appointment of an arbitrator, the Centre shall request the parties to make the appointment within fourteen days and if any party or all the parties fail to make the appointment the Centre shall appoint the arbitrator.

(8) A party who has to appoint an arbitrator may request from the Centre a list of arbitrators from the register of arbitrators, from which the party may make the appointment, and Centre shall provide the list.

(9) Where the Centre has to appoint an arbitrator,

(a) the Centre shall, after the filing of the notice of arbitration, submit to each party at the same time an identical list of five persons from the register, and

(b) each party shall within seven days from the submission of the list cross out any two names to which the party objects and number the remaining names in order of preference and return the list to the Centre.

(10) If a party fails to return the list within the specified time, all persons on the list shall be considered acceptable to that party and the Centre shall be entitled to appoint any of the persons on the list.

(11) The Centre shall, in accordance with the order of preference indicated on the returned lists, appoint the arbitrator and notify the arbitrator and the parties within seven days of the appointment.

(12) The appointed arbitrator shall within seven days of being notified, inform the Centre of the acceptance or rejection of the appointment.

(13) If

(a) the parties fail to agree upon any of the persons named,

(b) the acceptable arbitrator is unable to act, or

(c) for any other reason the appointment cannot be made from the submitted list, the Centre shall appoint the arbitrator from among persons on the register without the submission of an additional list to the parties.

### **Nationality of arbitrator in international arbitration**

12. In an international arbitration, unless the parties agree otherwise, the choice of arbitrators shall reflect the nationality of the parties, except that a sole arbitrator shall be of neutral nationality.

### **Considerations in the choice of arbitrator by the Centre**

13. The Centre in appointing an arbitrator shall have regard

- (a) to any qualification required of the arbitrator by the arbitration agreement or agreed upon by the parties,
- (b) to the independence and impartiality of the person intended to be appointed, and
- (c) in the case of a sole arbitrator in an international arbitration, to the neutral nationality of the person intended to be appointed.

### **Description of proposed arbitrator**

14. Where a party or the Centre appoints an arbitrator, it shall give the full name, address, nationality and qualification of the arbitrator to the other party and the Centre or to both parties as is appropriate.

### **Disclosure by proposed arbitrator**

15. (1) The Centre shall require a person appointed as an arbitrator to disclose in writing any circumstances likely to affect that person's independence or impartiality including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with any of the parties or their counsel, and the arbitrator shall make the disclosure to the Centre and the parties.

(2) The Centre shall notify the parties of any disclosure made under subrule (1).

### **Challenge of arbitrator**

16. (1) A party may challenge the appointment of an arbitrator if

- (a) there are circumstances that raise doubts as to the independence or impartiality of the arbitrator, or
- (b) the arbitrator does not possess the qualifications agreed on by the parties.

(2) A party may only challenge an arbitrator appointed by that party or in whose appointment that party has participated for reasons which that party becomes aware of after the appointment.

### **Challenge procedure**

17. (1) Parties to a dispute may within fourteen days of the appointment of the arbitrator jointly challenge the arbitrator by filing a written statement of the reasons of the challenge with the arbitrator and other members of the arbitral tribunal and the Centre.

(2) The Centre on receipt of a challenge under subrule (1) shall replace the challenged arbitrator.

(3) A party may challenge an arbitrator in writing with stated reasons, to the arbitrator, the other members of the arbitral tribunal and the Centre, within fourteen days of the appointment of the arbitrator.

(4) The Centre on receipt of a challenge from a party shall communicate the challenge to the other party who shall within seven days of the communication send a response to the Centre.

(5) If the other party endorses a challenge raised by one party, the Centre shall replace the challenged arbitrator.

(6) If the other party objects to the challenge, and the challenged arbitrator does not resign, the Centre shall hold a hearing with the parties and the challenged arbitrator within seven days of the objection, and determine whether the challenged arbitrator should be maintained or replaced.

(7) The decision of the Centre as to whether a challenged arbitrator over whom there is no agreement should be maintained or replaced shall be binding on the parties.

(8) An arbitrator who is challenged may withdraw, but the withdrawal of an arbitrator does not imply an acceptance of the validity of the challenge.

### **Revocation of an arbitrator's authority**

18. (1) The parties may agree on the circumstances under which the appointment of an arbitrator may be revoked.

(2) Unless the parties have agreed on the circumstances for revocation, the appointment of an arbitrator shall only be revoked

(a) by the parties acting jointly, or

(b) by the Centre acting on the application of a party.

(3) A party may at any time during arbitral proceedings apply to the Centre on notice to the other party for the revocation of the arbitrator's appointment on the grounds that

(a) there is sufficient reason to doubt the arbitrator's impartiality,

(b) the arbitrator does not possess the qualification required by the arbitration agreement,

(c) the arbitrator is physically or mentally incapable or there is justifiable doubt as to the arbitrator's capacity of conducting the proceedings, or

(d) the arbitrator has refused or failed to

(i) properly conduct the proceedings, or

(ii) use reasonable despatch in conducting the proceedings or making an award.

(4) If within seven days of the submission of an application under subrule (3) there is no objection from the other party, the Centre shall invite the applicant and the arbitrator for a hearing and if satisfied with the grounds of the application revoke the appointment of the arbitrator.

(5) If the other party objects to the application, the Centre shall within seven days of the receipt of the objection invite the parties and the arbitrator to a hearing to consider the application and objection on their merits.

(6) The Centre at a hearing under this rule may maintain or revoke the appointment of the arbitrator.

(7) A party dissatisfied with the decision of the Centre in respect of an application under this rule may with leave of the Court repeat the application to the Court, which may maintain or revoke the appointment as it finds appropriate.

(8) Unless the Centre or the Court decides otherwise, an application under this rule shall not serve as a stay of the arbitral proceedings.

(9) If the Centre or the Court revokes the appointment of an arbitrator, the Centre or the Court may make an order as it considers appropriate in respect of the arbitrator's fees or expenses.

### **Termination of mandate of arbitrator**

19. The mandate of an arbitrator shall terminate if

- (a) the arbitrator's appointment is revoked;
- (b) for any reason the arbitrator is unable to perform the arbitrator's functions, or
- (c) the arbitrator withdraws from office, resigns or dies.

### **Filling of vacancy**

20. (1) If the position of an arbitrator becomes vacant the parties may agree on

- (a) whether and how the vacancy is to be filled; and
- (b) whether the previous proceedings should stand.

(2) Where there is no agreement between the parties under subrule (1), the Centre shall appoint another arbitrator in accordance with these Rules.

(3) Upon the appointment of an arbitrator under subrule (2), to fill a vacancy in an arbitration which has

- (a) a sole or a presiding arbitrator, the appointed arbitrator shall in consultation with the parties decide whether to adopt the previous proceedings or to start afresh; or
- (b) more than one arbitrator, the previous proceedings may be adopted or the proceedings may start afresh where the tribunal and the parties agree.

### **Duties and powers of arbitral tribunal**

21. (1) An arbitral tribunal shall

- (a) be fair and impartial to the parties; and
- (b) give each party the opportunity to present its case.

(2) Subject to this Act, an arbitral tribunal may conduct the arbitration in a manner that the arbitrator considers appropriate but shall avoid unnecessary delay and expense and adopt measures that will expedite the resolution of the dispute.

(3) Subject to the right of parties to agree on any matter, the arbitral tribunal shall decide on matters of procedure and evidence.

(4) Matters of procedure and evidence include but are not limited to

- (a) the time and place for holding any part of the proceedings;
- (b) the questions that should be put to and answered by respective parties and how the questions should be put; and
- (c) the application or non-application of the strict rules of evidence as to admissibility, relevance or weight of any material sought to be tendered and how such material should be tendered.

(5) The arbitral tribunal may determine the time within which directions are to be complied with.

(6) The parties may agree to permit an arbitrator to

(a) consolidate one arbitral proceedings with other arbitral proceedings;

(b) hold concurrent hearings.

(7) An arbitral tribunal may admit as evidence, an affidavit or statutory declaration concerning the matters in evidence (whether the affidavit or statutory declaration was made in any other proceeding or in contemplation of the matter in reference) except that a copy of the affidavit or statutory declaration shall be given to the party against whom it is made, three days prior to its admission and the person whose evidence is so taken may at any time be cross-examined by the party against whom the evidence is given.

(8) An arbitral tribunal may employ an accountant to examine accounts connected with the matters in reference, and act upon any statement of accounts given by the accountant without being obliged to verify it.

(9) An arbitral tribunal may engage a legal assessor to sit with the arbitrator and may act on the advice of the assessor.

(10) An arbitral tribunal may at any stage of the proceedings obtain the opinion of counsel upon any question of law arising in the course of the reference and act upon the opinion.

(11) An arbitral tribunal may cause maps, plans and measurements to be made and taken as the arbitral tribunal considers necessary or expedient and the costs and expenses of making the maps, plans and measurements shall be at the discretion of the arbitrator.

(12) An arbitral tribunal may from time to time make an award upon any question in dispute between the parties, that may have arisen in the proceeding, and the tribunal shall not by so doing terminate the authority of the tribunal until all matters relating to the questions in dispute have been finally disposed of and any separate award shall be observed and performed without waiting for another award.

(13) An arbitral tribunal may order the execution of any document by a party to the arbitration for the purpose of giving effect to the award of the tribunal and to direct by whom and at whose expense that document must be prepared and executed.

### **Powers of umpire**

22. (1) An umpire may

(a) sit with the arbitrators and may from time to time examine witnesses, and

(b) decide any question as to the admissibility of evidence upon which the arbitrators differ or are in doubt

and except as provided in this subrule the umpire shall not interfere with the arbitration until a matter is referred to the umpire.

(2) Unless the arbitration is deadlocked, the arbitral tribunal shall make decisions, orders and awards.

(3) If the arbitration is deadlocked, the arbitral tribunal shall give notice of the deadlock in writing to the parties and the umpire shall then make decisions, orders and awards as a sole arbitrator.

(4) If when the arbitration is deadlocked, the arbitral tribunal fail to give notice, or if one arbitrator fails to join the others in giving the notice, a party may upon notice in writing to the other party and the arbitral tribunal request the Centre to order that the umpire replace the arbitrators to make decisions, orders and awards.

### **Arbitration management conference**

23. (1) An arbitral tribunal shall within fourteen days of being appointed and upon giving seven days written notice to the parties, conduct an arbitration management conference with the parties or their representatives in person or through electronic or other telecommunication media to determine

- (a) the issues to be resolved by arbitration;
- (b) the date, time, place and estimated duration of the hearing;
- (c) the need for discovery, production of documents or the issue of interrogatories and to establish how this should be done;
- (d) the law, rules of evidence and the burden of proof that is to apply to the proceedings;
- (e) the exchange of declaration regarding facts, exhibits, witnesses and other related issues;
- (f) whether there is the need to resolve issues of liability and damages separately;
- (g) whether the summary of evidence of parties should be oral or in writing;
- (h) the form of the award;
- (i) costs and arbitrator's fees bearing in mind the relevant fees of the Centre; and
- (j) any other issue relating to the arbitration.

(2) The decisions of an arbitration conference shall be in writing and shall be served on the parties and Centre within two days immediately after the conference.

(3) An arbitral tribunal may hold further arbitration conferences as are considered necessary upon four days written notice to the parties.

### **Conciliation conference**

24. (1) The Centre may with the consent of the parties at any time during the arbitration process, arrange a conciliation conference to facilitate the resolution of the dispute, except that an arbitrator in the action shall not be the conciliator.

(2) A conciliation conference shall be informal and unless the parties otherwise agree only the parties and the conciliator shall be present at the conference.

(3) A conciliation conference shall not, unless the parties decide otherwise, last for more than seven days.

(4) The conciliator shall be a person appointed jointly by the parties or where the parties are unable to make the appointment, appointed by the Centre.

(5) The parties may request the Centre to provide them with a list of conciliators from which to make an appointment.

(6) The conciliator shall take every necessary step to resolve the differences between the parties.

### **General provisions governing proceedings**

25. (1) Subject to these Rules, an arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated fairly and at every stage of the proceedings, each party is given a full opportunity for presenting that party's case.

(2) If a party so requests at any stage of the proceedings, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument.

(3) In the absence of a request by a party, the arbitral tribunal shall decide whether to hold such hearings or whether to conduct the proceedings on the basis of documents and other materials.

(4) Documents or information supplied to the arbitral tribunal by one party shall at the same time be communicated by that party to the other party.

#### **Place of arbitration and place of award**

26. (1) Unless the parties have agreed upon the place where the arbitration is to be held, the place shall be determined by the arbitral tribunal, having regard to the circumstances of the arbitration.

(2) Where the parties agree only on the country in which arbitration is to be held, the arbitral tribunal may hear witnesses and hold meetings for consultation among its members at any place it considers appropriate in the country, having regard to the circumstances of the arbitration.

(3) The arbitral tribunal may meet at any place it considers appropriate for the inspection of goods, other property or documents, except that the parties shall be given sufficient notice to enable them to be present at an inspection.

(4) The award shall be made at the place of arbitration.

#### **Language**

27. (1) Except as otherwise agreed by the parties, the arbitral tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings.

(2) The determination shall apply to the claim, the answer and any further written statements and, if oral hearings take place, to the language or languages to be used in the hearings.

(3) The arbitral tribunal may order any document annexed to the claim or answer and any supplementary documents or exhibits submitted in the course of the proceedings, to be delivered in their original language, to be accompanied by a translation into the language or languages agreed upon by the parties or determined by the tribunal.

#### **Plea to the jurisdiction of the arbitral tribunal**

28. (1) An arbitral tribunal shall rule on objections to its jurisdiction, including any objections with respect to the existence or validity of the arbitration clause or of the separate arbitration agreement.

(2) An arbitral tribunal shall determine the existence or the validity of the contract of which the arbitration clause forms a part.

(3) For the purposes of this rule, an arbitration clause which forms part of a contract and which provides for arbitration under these Rules shall be treated as an agreement independent of the other terms of the contract.

(4) A decision by an arbitral tribunal that the contract is void shall not invalidate the arbitration clause.

(5) A plea that an arbitral tribunal does not have jurisdiction shall be raised not later than in the answer or, with respect to a counterclaim, in the reply to the counterclaim.

(6) An arbitral tribunal shall rule on an objection to its jurisdiction as a preliminary question and where the objection is rejected, the tribunal shall proceed with the arbitration and make an award.

#### **Further written statements**

29. (1) An arbitral tribunal shall decide which further written statements, in addition to the claim and the answer are required from or may be presented by the parties and shall fix the periods of time for communicating these statements.

(2) The periods of time fixed by the arbitral tribunal for the communication of further written statements shall not exceed twenty-one days, except that the arbitral tribunal may extend the time limits if it concludes that an extension is justified.

#### **Evidence and hearings**

30. (1) A party has the burden of proving the facts relied on to support the claim or answer of the party.

(2) An arbitral tribunal may, if it considers it appropriate, require a party to deliver to the tribunal and to the other party, within a period of time specified by the arbitral tribunal, summary of the documents and other evidence which that party intends to present in support of the facts in issue set out in that party's claim or answer.

(3) At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within a period of time determined by the tribunal.

(4) In the event of oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place of the hearing.

(5) If witnesses are to be heard, each party shall, at least fourteen days before the hearing, communicate to the arbitral tribunal and to the other party the names and addresses of the witnesses that party intends to present, the subject upon, and the languages in which, the witnesses will give their evidence.

(6) An arbitral tribunal shall make arrangements for the translation of oral statements made at a hearing and for a record of the hearing if either is considered necessary by the tribunal under the circumstances of the case, or if the parties have agreed to this and have communicated that agreement to the tribunal at least fourteen days before the hearing.

(7) Hearings shall be in private unless the parties agree otherwise.

(8) The arbitral tribunal may require a witness to retire during the testimony of other witnesses and the tribunal is free to determine the manner in which witnesses are examined.

#### **Interim measures of protection**

31. (1) At the request of either party, an arbitral tribunal may take any interim measures it considers necessary in respect of the subject-matter of the dispute, including measures for the conservation of goods that form the subject-matter in dispute, such as ordering their deposit with a third person or the sale of perishable goods.



(2) Interim measures may be in the form of an interim award and the arbitral tribunal shall be entitled to require security for the costs of the measures.

### **Experts**

32. (1) An arbitral tribunal may appoint one or more experts to report to it, in writing, on specific issues to be determined by the tribunal and a copy of the expert's term of reference, established by the tribunal, shall be communicated to the parties.

(2) The parties shall give the expert any relevant information or produce for the expert's inspection any relevant documents or goods that the expert may require of them and any dispute between a party and an expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for determination.

(3) Upon receipt of the expert's report, the arbitral tribunal shall send copies of the report to the parties, who shall be given the opportunity to express their opinion on the report; and a party may examine any document on which the expert has relied upon in the report.

(4) An expert, after delivery of a report, may at the request of either party, be heard at a hearing where the parties shall have the opportunity to be present and to cross-examine the expert, and at this hearing either party may present expert witnesses in order to testify on the points in issue.

(5) The provisions of rule 30 (Evidence and hearings) are applicable to a hearing under this rule.

### **Default**

33. (1) If one of the parties, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for the failure, the arbitral tribunal may proceed with the arbitration.

(2) If one of the parties, duly invited to produce documentary evidence, fails to do so within the specified period of time, and without showing sufficient cause for the failure, the arbitral tribunal may make the award on the evidence before it.

### **Closure of hearings**

34. (1) An arbitral tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.

(2) An arbitral tribunal, if it considers it necessary owing to exceptional circumstances, may on its own motion or upon application of a party, re-open the hearings at any time before the award is made.

### **Waiver of Rules**

35. A party who knows that any provision of, or requirement under, these Rules has not been complied with and yet proceeds with the arbitration without promptly stating the objection to the non-compliance, shall be deemed to have waived the right to object.

### **Decisions**

36. (1) When there are three or more arbitrators, any award or decision of the arbitral tribunal shall be made by a majority of the arbitrators.

(2) The provisions of rule 22 shall apply where the arbitration is deadlocked.

### **Form and effect of the award**

37. (1) The arbitral tribunal in addition to making a final award, may make interim, interlocutory, or partial awards.

(2) An award shall be in writing and shall be binding on the parties.

(3) Except as otherwise provided under these Rules or as the parties otherwise agree, the arbitral tribunal shall state the reasons upon which the award is based.

(4) An award shall be signed by the arbitrators and it shall contain the date on which and the place where the award was made.

(5) Where there are three arbitrators and any of them fails to sign, the award shall state the reason for the absence of the signature.

(6) Copies of the award signed by the arbitrators shall be communicated to the parties by the arbitral tribunal and the award may be made public only with the consent of both parties.

(7) If the law of the arbitration agreement requires that the award be filed or registered by the arbitral tribunal, the tribunal shall comply with this requirement within the period of time required by the law.

### **Applicable law**

38. (1) An arbitral tribunal shall apply the law designated by the parties as applicable to the substance of the dispute and failing such designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules it considers applicable.

(2) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

### **Settlement or other grounds for termination**

39. (1) If before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by both parties and accepted by the tribunal, record the settlement in the form of an arbitral award on agreed terms and the arbitral tribunal is not obliged to give reasons for such an award.

(2) If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in subrule (1), the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings and the arbitral tribunal may issue the order unless a party raises justifiable grounds of objection.

(3) Copies of the order of termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties.

(4) The provisions of rule 37 subrules (2), (4) and (7) shall apply to an arbitral award on agreed terms.

### **Interpretation of the award**

40. (1) Within thirty days after the receipt of an award, either party, with notice to the other party, may request the arbitral tribunal to give an interpretation of the award.

(2) The interpretation shall be given in writing within fourteen days after the receipt of the request and shall form part of the award.

### **Correction of the award**

41. (1) Within thirty days after the receipt of an award, either party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical error, or any errors of similar nature.

(2) The arbitral tribunal may within thirty days after the communication of the award, make such corrections on its own initiative.

(3) Corrections shall be in writing, and the provisions of rule 37 subrules (2) to (7), shall apply.

### **Additional award**

42. (1) Within thirty days after the receipt of the award, either party, with notice to the other party, may request the tribunal to make an additional award in respect of claims presented in the arbitral proceedings but omitted from the award.

(2) If the arbitral tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall complete its award within thirty days after the receipt of the request.

(3) When an additional award is made, the provisions of Rule 37 subrules (2) to (7), shall apply.

### **Costs and fees**

43. (1) An arbitral tribunal shall fix the costs of the arbitration in its award; and the term 'costs' for this purpose means

- (a) the fees of the arbitrators and umpire to be stated separately as to each arbitrator and to be fixed by the arbitral tribunal itself in accordance with this rule;
- (b) the travel and other expenses incurred by the arbitrators;
- (c) the costs of expert advice and of other assistance required by the arbitral tribunal;
- (d) the travel and other expenses of witnesses to the extent that those expenses were approved by the arbitral tribunal;
- (e) the costs for legal representation and assistance of the successful party if these costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of these costs is reasonable; and
- (f) any fees and expenses of the Centre.

(2) The fees of the arbitral tribunal shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject-matter, the time spent by the arbitrators and any other relevant circumstances of the case.

(3) An arbitral tribunal in fixing its fees shall take into account any list of fees issued by the Centre.

(4) Where the Centre has not issued a list of fees for arbitrators in international cases, a party may at any time request the Centre to furnish a statement that sets out the basis for establishing fees which is customarily followed in international cases in which the Centre appoints arbitrators and if the Centre consents to provide that statement, the arbitral tribunal in fixing its fees shall take the information into account.

(5) Except as provided in subrule (6), the costs of arbitration shall be borne by the unsuccessful party, except that the arbitral tribunal may apportion each of the costs between the parties, if it determines that apportionment is reasonable taking into account the circumstances of the case.

(6) With respect to the costs of legal representation and assistance referred to in subrule (1)(e), the arbitral tribunal, taking into account the circumstances of the case, may determine which party shall bear the costs or any apportionment of the costs between the parties, if it determines that apportionment is reasonable.

(7) When an arbitral tribunal issues an order for the termination of arbitral proceedings or makes an award on agreed terms, it shall fix the costs of arbitration.

(8) No additional fees shall be charged by an arbitral tribunal for interpretation or correction or completion of its award under rules 40, 41 and 42.

#### **Deposits of costs**

**44.** (1) An arbitral tribunal, on its appointment, may request each party to deposit an equal amount as an advance for the costs referred to in rule 43 (1)(a), (b) and (c).

(2) During the course of the arbitral proceedings the arbitral tribunal may request supplementary deposits from the parties.

(3) Where a party requests, and the Centre consents to provide a list of fees, the arbitral tribunal shall fix the amounts of any deposits or supplementary deposits only after consultation with the Centre which may make any comments it considers appropriate to the arbitral tribunal concerning the amount of deposits and supplementary deposits.

(4) If the required deposits are not paid in full within thirty days after the receipt of the request, the arbitral tribunal shall inform the parties in order that one or the other party may make the required payment.

(5) If payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.

(6) After the award has been made, the tribunal shall render an account to the parties of the deposits received and return any unexpended balance to the parties.

**THIRD SCHEDULE**  
**EXPEDITED ARBITRATION PROCEEDINGS RULES OF THE CENTRE**  
*(Section 60)*

**Notice**

1. (1) Notice to a party and the Centre may be by telephone, fax, e-mail, or other mode of electronic communication.

(2) A notice by telephone shall be confirmed in writing but a failure to confirm the notice in writing shall not invalidate proceedings.

**Appointment of arbitrator in expedited arbitration**

2. (1) If the claim or counterclaim does not exceed US\$100,000 or its cedi equivalent, the Centre shall upon the submission of the dispute by a party appoint a sole arbitrator from the register of arbitrators of the Centre upon the payment of the applicable fee.

(2) Where the claim or counterclaim in issue exceeds US\$100,000 or its cedi equivalent; or whatever the claim or subject matter, the parties agree to the resolution of the issue by expedited arbitration procedure, the Centre shall upon the notification under subrule 1(1) submit to the parties at the same time an identical list of five arbitrators upon payment by the applicant of the prescribed fee.

(3) Where a list is submitted to the parties as provided under subrule (2) each party shall peremptorily strike out two names on the list and number the arbitrators left on the list in order of preference and return the list to the Centre within seven days of receipt of the list.

(4) The Centre shall upon the receipt of the list appoint a single arbitrator from the returned list.

(5) If an arbitrator cannot be appointed from the list, the Centre shall without further reference to the parties appoint an arbitrator from the register.

(6) The Centre shall, whatever the claim to which the expedited procedure is applied, give notice of the appointment of an arbitrator to the parties who shall within three days of receipt of the notice communicate their objection to the appointment, if any, to the Centre.

(7) An objection to an arbitrator by telephone shall be confirmed in writing to the Centre with copies to the other party.

(8) If the appointment of an arbitrator is objected to, the Centre shall decide whether to retain that arbitrator or appoint a new arbitrator.

**Date, time and place of hearing**

3. (1) The arbitrator shall determine the date, time and place of hearing.

(2) he Centre shall give notice of the time of hearing to the parties not later than seven days before the hearing date.

(3) Except where the dispute is to be resolved by the submission of documents, the hearing shall be completed within one day.

(4) Where there is sufficient reason for doing so, the arbitrator may schedule an additional hearing to be held within three days of the end of hearing.

**Time for award**

4. Except the parties otherwise decide, the arbitrator shall make an award within seven days from the close of hearing.

**FOURTH SCHEDULE**  
**MEDIATION RULES OF THE CENTRE**  
*(Section 66 (3))*

**Submission of dispute for mediation**

1. (1) A party to a dispute whether or not there is a mediation agreement in respect of that dispute may initiate mediation with the Centre by

- (a) filing 2 copies of a submission for mediation with the Centre;
- (b) paying the prescribed fee; and
- (c) serving each of the parties to the dispute with a copy of the submission.

(2) A submission shall contain

- (a) a statement of the nature of the dispute, and
- (b) the names, addresses and telephone numbers of the parties to the dispute.

**Reference to mediation by court**

2. (1) A court before which an action is pending may at any stage in the proceedings, if it is of the view that mediation will facilitate resolution of the matter or part of the matter in dispute, and the parties desire mediation by the Centre, refer the matter or that part of the matter to the Centre for mediation.

(2) A reference under rule (1) shall state

- (a) the nature of the dispute;
- (b) the monetary value of the claim; and
- (c) the remedy sought

and shall have attached copied of the pleadings and any other documents the court considers relevant.

(3) A reference under this rule shall serve as a stay of proceedings of the court action.

(4) Where a reference leads to a settlement of the dispute or a part of the dispute, the settlement shall be

- (a) filed in the court;
- (b) recorded by the court as a judgment of the court; and
- (c) enforce by the court as its judgment.

(5) Where the reference does not lead to a settlement, the court shall continue with the proceedings from the point where the reference was made.

### **Appointment of mediator**

3. (1) The Centre on receipt of a submission shall appoint a qualified person registered with the Centre to serve as a mediator in the dispute.

(2) Where the parties name a mediator or specify a method of appointing a mediator in an agreement, the Centre shall appoint the person named or follow the specified method.

(3) Unless the parties agree otherwise, the Centre shall appoint only one person to serve as mediator.

### **Mediator with interest**

4. Except by the written consent of the parties, the Centre shall not appoint a person to serve as a mediator in a dispute if that person has a financial or personal interest in the outcome of the dispute.

### **Disclosure by mediator**

5. (1) A person appointed a mediator shall disclose any circumstance relating to that person that is likely to

(a) create a presumption of bias; or

(b) affect the conduct of mediation before accepting the appointment.

(2) Where a disclosure is made under subrule (1), the Centre shall within seven days of the disclosure inform the parties.

(3) If a party upon being informed of a disclosure objects to the proposed mediator, the Centre shall appoint another mediator in substitution.

### **Termination of appointment for delay**

6. The Centre may replace a mediator who fails to start work promptly.

### **Filling of vacancy in mediation**

7. Unless the parties otherwise agree, the Centre shall appoint another mediator to replace a mediator who is unable to perform or vacates the post.

### **Powers of mediator**

8. (1) A mediator shall do everything necessary to help the parties to satisfactorily resolve their dispute.

(2) The mediator may conduct joint or separate meetings with the parties and make recommendations for settlement.

(3) The mediator may where necessary and if the parties agree to pay the expenses, obtain expert advice on technical aspects of the dispute.

(4) A request for the services of an expert may be made by the mediator or by a party with the consent of the mediator.

(5) A mediator may end the mediation whenever the mediator is of the opinion that further mediation between the parties would not help resolve the dispute between the parties.

### **Representation in mediation**

9. (1) A party may be represented by a lawyer, an expert or any other person chosen by the party.



(2) A party shall communicate in writing to the Centre and the other party the name and address of any representative within seven days of the representative's appointment.

#### **Date, time and place of mediation**

10. (1) The mediator shall determine the date and time of each mediation session.

(2) Subject to the mediator choosing a convenient place, the Centre with the agreement of the parties, shall determine the place for the mediation.

#### **Identification of issues in dispute**

11. Not later than eight days before the first mediation session, each party shall present to the Centre and the other party, a memorandum setting out the party's position with regard to the issues which require resolution.

#### **Presentation of relevant documents and information**

12. A party shall present documents and information required for the resolution of the dispute to the mediator at the first mediation session.

#### **Attendance at mediation**

13. Except where the parties agree and the mediator consents, a person who is not a party to the mediation shall not attend a mediation session.

#### **Confidentiality of mediation**

14. (1) Records, reports and the other documents required in the course of mediation shall be confidential.

(2) A mediator shall not disclose confidential information given in the course of the mediation.

(3) A party to a mediation shall not rely on

- (a) the record of the mediation;
- (b) any evidence adduced at the mediation; or
- (c) information obtained during the mediation

as evidence in court proceedings.

#### **Suggestions by parties for settlement of dispute**

15. Each party may, on that party's own initiative or at the invitation of the mediator, submit to the mediator suggestions for the settlement of the dispute.

#### **End of mediation**

16. (1) A mediation ends when

- (a) the parties execute a settlement agreement;
- (b) the mediator makes a written declaration to the effect that further mediation is not worthwhile; or
- (c) a party makes a written declaration to the effect that the mediation is terminated.

(2) The settlement at a mediation is binding on the parties only where the parties so agree.

#### **Exclusion of liability**

17. (1) The Centre or a mediator is not a necessary party in any court proceedings relating to the mediation.

(2) The Centre or a mediator is not liable to a party for an act or omission in respect of a mediation under this Act.

**Mediation expenses**

18. (1) A party to a mediation shall pay the expenses of its witnesses.

(2) The parties shall equally pay the expenses of the mediation including the expenses of

(a) the mediator;

(b) the representative of the Centre (if any); and

(c) witnesses and experts called by the mediator.

**FIFTH SCHEDULE**  
**ARBITRATION CLAUSES OR AGREEMENTS (SAMPLES)**  
*(Section 2 (3))*

**Clause referring future disputes to arbitration**

1. Any dispute or difference between the parties in connection with this agreement shall be referred to arbitration.

**Clause referring future disputes to a single arbitrator to be appointed by an appointing authority**

2. Any dispute or difference between the parties in connection with this agreement shall be referred to and determined by a sole arbitrator to be appointed by..... (name of the appointing authority).

**Arbitration agreement referring future disputes to a single arbitrator**

3. (1) Any dispute or difference between the parties in connection with this agreement shall be referred to and determined by a sole arbitrator..... (name of the arbitrator) and the arbitration shall be held in..... (place of arbitration).

(2) The arbitrator shall be appointed by agreement between the parties or in default of agreement by the parties, be determined by the appointing authority.

(3) In the event of default by either party in respect of any procedural order made by the arbitrator, the arbitrator may proceed with the arbitration in the absence of that party and deliver the arbitration award.

**Clause referring future disputes to two arbitrators**

4. Any dispute or difference between the parties in connection with this agreement shall be referred to and determined by two arbitrators, one to be appointed by each party.

**Arbitration agreement referring future disputes to two arbitrators and an umpire**

5. (1) Any dispute or difference between the parties in connection with this agreement shall be referred to and determined by two arbitrators, and the arbitration shall be held in..... (place of arbitration).

(2) Each party shall appoint one arbitrator, and the arbitrators so appointed shall appoint an umpire. The umpire shall attend all hearings, including preliminary meetings, but shall not be called upon to act unless the arbitrators appointed by the parties fail to agree.

(3) If either party fails to appoint an arbitrator within seven clear days after the other party has appointed an arbitrator and has served the defaulting party with a notice to make

the appointment, the party who has appointed an arbitrator is entitled to appoint that arbitrator to act as sole arbitrator.

(4) The procedure to be followed in the arbitration shall be agreed upon by the parties or, in default of agreement, determined by the arbitrators or, if necessary, by the umpire.

(5) In the event of default by either party in respect of any procedural order made by the arbitrators or umpire, the arbitrators or umpire may proceed with the arbitration in the absence of that party and to deliver the award.

#### **Clause referring future disputes to a tribunal of three arbitrators**

6. Any dispute or difference between the parties in connection with this agreement shall be referred to and determined by arbitration in..... (place of arbitration) by a tribunal of 3 arbitrators. Each party shall appoint one arbitrator and the third arbitrator shall be appointed by agreement between the arbitrators so appointed, or in default of agreement between them, by..... (the appointing authority).

#### **Arbitration agreement referring future disputes to a tribunal of three arbitrators**

7. (1) Any dispute or difference between the parties in connection with this agreement shall be referred to and determined by arbitration in..... (place of arbitration).

(2) The arbitral tribunal shall consist of three arbitrators and shall be constituted as follows:

- (a) the claimant shall nominate an arbitrator and may by notice in writing call on the other party to nominate an arbitrator within ..... days of the notice, failing which the second arbitrator shall at the request of the claimant be appointed by ..... (the appointing authority),
- (b) the third arbitrator [who shall serve as umpire of the tribunal] shall be appointed by agreement between the two arbitrators appointed under (a) or, in default of agreement within .... days of the appointment of the second arbitrator, on the nomination of..... (the appointing authority) at the written request of either or both of the parties,
- (c) where a vacancy arises because any arbitrator dies or resigns, refuses to act, or [in the opinion of the other arbitrators or the appointing authority] becomes incapable of performing the functions of office, the vacancy shall be filled by the method by which that arbitrator was originally appointed.

(3) The procedure to be followed in the arbitration shall be agreed by the parties or, in default of agreement, determined by the tribunal.

(4) In the event of default by either party in respect of any procedural order made by the tribunal, the tribunal shall have power to proceed with the arbitration in the absence of that party and to deliver its award.

(5) Any award or procedural decision of the tribunal shall if necessary be made by a majority vote. In the absence of a majority vote the umpire shall make an award or procedural decision as if the umpire were a sole arbitrator.