



Botswana  
Institute of  
Arbitrators

# **RULES FOR THE CONDUCT OF ARBITRATIONS**

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These Rules are essentially those of the Association of Arbitrators (Southern Africa) (“the Association”) and have been modified to meet local conditions with the express permission of the Association.

The Institute wishes to acknowledge, with gratitude, the Association’s assistance in effecting the revision to the Rules.

These Rules are intended to facilitate cost-effective arbitrations. The Arbitrator has the discretion regarding the application of these rules and to the extent to which they can be applied.

The Standard Procedure Rules are appropriate in most instances, particularly where the parties are represented, and apply except where the parties have agreed otherwise.

The Summary Procedure Rules are intended for the smaller and simpler arbitrations, particularly where the parties are not represented and have little or no experience of arbitration procedure.

They require that the arbitrator plays a more active and interventionist role than he would do under the Standard Procedure Rules.

The Small Claims Arbitration Tribunal (SCAT) Rules are intended for matters involving less than BWP60 000 and preclude legal representation. The Arbitrator’s fee is fixed.

For any of the above Rules to apply to an arbitration, the parties thereto must have agreed, in their arbitration agreement, or otherwise in writing, that such Rules are applicable. Where the parties have so agreed, they thereby confer on the Botswana Institute of Arbitrators authority to act as provided for herein.

An Arbitrator who applies the Rules thereby submits to the authority of the Botswana Institute of Arbitrators to the extent applicable to him as stipulated herein.

# GENERAL PROVISIONS

These general provisions shall apply to the Standard Procedure Rules and the Summary Procedure Rules.

## Preamble

Nothing shall oblige the Institute to appoint an Arbitrator. The Institute reserves the right to charge such administration fees, as its executive committee may, from time to time, deem appropriate for the appointment of an Arbitrator. The Institute reserves its right to refuse to appoint an Arbitrator.

## 1. DEFINITIONS

In these Rules:

1.1 “Day” means any day other than a Saturday, Sunday or public holiday;

1.2 “Rules” means these arbitration rules;

1.3 “Claimant” means the party to the arbitration who claims relief against the other party, provided that if each party claims relief against the other, “Claimant” shall mean the party who first referred the dispute to arbitration;

1.4 “Defendant” means the party to the arbitration other than the Claimant;

1.5 “Document” means, in relation to each party, any contemporary document of whatsoever nature in his possession or under his control, whether an original or a copy, relating to the dispute which has been referred to arbitration, including plans, diagrams, photographs and recordings on magnetic tape, compact disc and computer disc or other electronic storage media;

1.6 “Representative” means any person engaged by a party to assist him in the preparation of his claim or defence, as the case may be, and to present his claim or defence at the arbitration hearing on his behalf, and shall include an advocate, an attorney, a claims consultant or any other person

who, by virtue of his training and experience, is able to present the case.

1.7 “Submissions” means the Statement of Issues, Statement of Claim, Statement of Defence, Defendant’s Counterclaim and Claimant’s Reply and any other similar documents permitted by the Arbitrator.

1.8 Where appropriate words importing the singular shall include the plural and words importing the masculine shall include the other gender.

1.9 “Arbitrator” shall include more than one Arbitrator where the Agreement so provides or requires the appointment thereof, and in so far as the context may require, includes “Umpires” and “Referees” in terms of the Act.

1.10 “Institute” shall mean the Botswana Institute of Arbitrators.

1.11 “Deliver” or “Delivery” shall mean delivery by hand and/or by facsimile and/or by mail or e-mail to a party at the address or addresses chosen by that party and notified by him in writing to the Arbitrator and the other party. A party may vary such addresses from time to time by notification by him in writing to the Arbitrator and the other party.

1.12 “Act” means the Arbitration Act (Cap 6:01), as amended from time to time, or any repealing or amending legislation.

1.13 “Party” shall mean either the Claimant or the Defendant, and “Parties” shall mean both the Claimant and the Defendant.

1.14 “Agreement” means the written arbitration agreement entered into between the parties.

1.15 “Agree” means consensus by the parties, and the Arbitrator where applicable, in writing and signed by the parties and the Arbitrator where applicable.

## **2. APPLICATION OF ARBITRATION ACT**

Save as varied herein or, insofar as the provisions of the Arbitration Act are mandatory, the Act shall apply.

## 3. TIME LIMITS

3.1 Where no time period is specified for the doing of any act in terms of these Rules or in terms of any ruling, directive or decision of the Arbitrator, unless the parties have otherwise agreed, such period shall be stipulated by the Arbitrator.

3.2 Unless the parties otherwise agree, the time limits stated in these Rules shall not be extended or shortened except by leave of the Arbitrator.

## 4. CONFIDENTIALITY

Unless the parties otherwise agree, the proceedings and any Award(s) published therein shall be confidential save to the extent that disclosure may be required in order to protect or pursue a legal right or to enforce or challenge an award in any legal proceedings.

## 5. DISPUTE ON RULES

Any dispute about the meaning or effect of any of these Rules shall be determined by the Arbitrator who shall further have the power to give directions, not inconsistent with the Rules, on the manner and time in which the Rules shall be carried into effect.

## 6. GENERAL PRINCIPLES

6.1 The Arbitrator may conduct the arbitration in such manner as he considers appropriate, subject to these Rules, provided he ensures the equal treatment of the parties and their right to be heard.

6.2 The parties to the arbitration shall at all times act in good faith.

### ***STANDARD PROCEDURE RULES***

*The Standard Procedure Rules shall apply to the conduct of the arbitration unless the parties agree to adopt any variation of these Rules or to adopt the Summary Procedure or SCAT Rules.*

## 7. APPOINTMENT OF ARBITRATOR

7.1 Where an agreement to refer a dispute to arbitration requires that the Rules of the Institute shall apply thereto but does not identify the Arbitrator or the method by which the Arbitrator is to be appointed, the Chairman for the time being of the Institute alternatively the Vice Chairman, alternatively such other member of the executive committee as the Chairman or Vice Chairman shall nominate for the purpose of appointing an Arbitrator may, on the application of either party to the reference, appoint the Arbitrator.

7.2 Before appointment, a prospective arbitrator shall sign a statement to the effect that there are no grounds known to him which are likely to give rise to justifiable doubts regarding his independence and impartiality, and the arbitrator must further disclose in writing any facts or circumstances which may be of such a nature as to call into question the arbitrator's independence or impartiality in the eyes of the parties. This statement must be delivered to the parties by not later than the first preliminary meeting.

## 8. CHALLENGE

8.1 If any Arbitrator :

8.1.1 falls seriously ill, or becomes unable or unfit to act; or

8.1.2 lacks the necessary independence; or

8.1.3 for any other reason ought not to continue as Arbitrator (e.g. lacks impartiality); the Chairman of the Institute or his nominee from time to time shall, upon application as provided below, subject to Rule 8.7, convene a committee consisting of not less than three members ("the Committee") who may revoke the Arbitrator's appointment and appoint another Arbitrator.

8.2 A party who intends to challenge an Arbitrator in terms of Rule 8.1, shall make written application to the Chairman of the Institute within 10 days of him becoming aware of any circumstances referred to in Rule 8.1,

which application will set out fully the reasons for the challenge, failing which such party shall forfeit the right to make such challenge. A copy of the application shall simultaneously be served on the other party.

8.3 Within 10 days of the date of receipt by the applicant of notice from the Institute as to the relevant fee, the applicant shall lodge with the Institute the relevant fee as determined by the executive committee of the Institute from time to time.

8.4 Failure to lodge the fee shall render the challenge invalid.

8.5 Any other party to the reference who receives an application referred to in Rule 8.2 and who wishes to oppose such application shall within 10 days of receipt by him of the application submit a written response fully motivating its opposition.

8.6 A copy of the application and any reply shall be served by the respective parties on the Arbitrator who shall be entitled within 10 days of receipt thereof to reply in writing.

8.7 Unless the parties agree to the withdrawal of the Arbitrator, the Committee will decide the challenge.

8.8 Where an Arbitrator is to be replaced and the parties are unable to agree on the replacement arbitrator, the Committee shall decide whether or not to follow the original nominating process or to appoint a replacement arbitrator.

8.9 The Committee shall give directives regarding the costs of the challenge and, if the challenge is successful, the amount of fees and expenses to be paid for the former arbitrator's services, but shall only give directions regarding the costs of the arbitration proceedings if the parties so agree.

8.10 When a new Arbitrator is appointed, the proceedings shall continue as if the new Arbitrator had been the Arbitrator from the commencement of the reference, unless the Arbitrator decides otherwise.

## 9. PRELIMINARY MEETING

9.1 On the reference of the dispute to the Arbitrator he may convene a Preliminary Meeting with the parties for the purpose of:

9.1.1 confirming that the dispute falls within the ambit of the arbitration agreement and is ready for arbitration;

9.1.2 confirming the Arbitrator's jurisdiction to determine the dispute;

9.1.3 recording the acceptance by the Arbitrator of his appointment and acceptance by the parties of any conditions attached thereto;

9.1.4 determining whether the arbitration is to be conducted in accordance with the Standard Procedure Rules or the Summary Procedure Rules or any modification of either; and whether any of the Rules of the High Court should apply.

9.1.5 arranging for the delivery of Submissions as provided in Rules 12 to 16;

9.1.6 determining the dates and venue of the hearing and the times and duration of the sessions;

9.1.7 whether the parties have taken cognisance of Rule 34 and if so their agreement in respect of same; and

9.1.8 dealing with any other matters or proposals that might facilitate the conduct of the arbitration.

9.2 If no Preliminary Meeting is held the Arbitrator shall determine the commencement date for the Submissions.

## 10. PROCEDURAL DIRECTIVES

10.1 The Arbitrator may, at any time, make or vary any procedural directives which, in his opinion, will expedite the matter or render it more cost effective.



10.2 The Arbitrator shall not exercise his powers under sub-rule 10.1 without affording the parties an opportunity to make representations to him thereon.

## 11. JURISDICTION

11.1 The Arbitrator may decide any dispute regarding the existence, validity, or interpretation of the arbitration agreement and, unless otherwise provided therein, may rule on his own jurisdiction to act.

11.2 A party to the reference wishing to challenge the jurisdiction of the arbitrator or who wavers that the arbitrator is exceeding his jurisdiction shall raise the jurisdictional issue at the first available opportunity, failing which he shall be deemed to have consent to the arbitrator's jurisdiction.

11.3 Where the Arbitrator has made a jurisdictional ruling pursuant to this rule otherwise than in an award, a party who wishes to contest that ruling in court may only do so after the award, in the absence of exceptional circumstances.

11.4 For the purposes of this Rule an arbitration clause which forms part of a contract shall be regarded as an agreement independent of the other terms of the contract. A decision by the Arbitrator that the contract is null and void shall not of itself result in invalidity of the arbitration clause.

11.5 The Arbitrator shall have the jurisdiction to determine a defence of set off even when the relationship out of which the defence is said to arise is not within the scope of the arbitration clause or is subject to another arbitration agreement.

## 12. STATEMENT OF ISSUES

Not later than 15 days after the date of the Preliminary Meeting the parties shall jointly prepare and submit to the Arbitrator a Statement of Issues detailing:

12.1 relevant matters which are not in dispute;

12.2 the disputed issues, in respect of each of which are set out:

12.2.1 the averments of the party concerned;

12.2.2 the other party's response thereto; and

12.2.3 the facts and contentions of law on which each party relies; together with true copies of all relevant documents necessary to sustain the above; and

12.3 the Award which each party desires the Arbitrator to make. Provided that if the parties are unable jointly to prepare a Statement of Issues or agree not to do so, they shall deliver Submissions as provided for in Rules 13 to 16.

## **13. STATEMENT OF CLAIM**

Where a Statement of Issues is not submitted, the Claimant shall, not later than 20 days after the Preliminary Meeting, deliver to the Arbitrator and the Defendant a Statement of Claim, consisting of:

13.1 the averments constituting the claim;

13.2 all the facts and contentions of law on which the Claimant bases its claim;

13.3 the relief sought; and

13.4 true copies of all relevant documents necessary to sustain the above.

## **14. STATEMENT OF DEFENCE**

Not later than 15 days after the receipt by the Defendant of the Statement of Claim, the Defendant shall deliver to the Arbitrator and to the Claimant a Statement of Defence, consisting of:

14.1 a response admitting, denying or objecting to each contention of fact and law in the Statement of Claim;

14.2 the grounds for every denial or objection;

14.3 all the facts and contentions of law on which the Defendant bases its defence; and true copies of all relevant documents necessary to sustain the above, unless already delivered as part of the Statement of Claim.

## **15. DEFENDANT'S COUNTERCLAIM**

At the time of delivery of the Statement of Defence, the Defendant may deliver counterclaims, to the Arbitrator and to the Claimant, setting forth, with the necessary changes, details of the matters referred to in terms of Rule 13 together with true copies of all relevant documents other than those delivered with any previous Submission, all of which details and copies are hereinafter referred to as the "Defendant's Counterclaim".

## **16. CLAIMANT'S REPLY**

Not later than 15 days after the receipt by the Claimant of the Defendant's Counterclaim, the Claimant shall deliver to the Arbitrator and the Defendant details of his defence to the Defendant's Counterclaim in accordance with the provisions of Rule 14, with the necessary changes, all of which details and copies are hereinafter referred to as the "Claimant's Reply".

## **17. AMENDMENTS AND SUBMISSIONS**

17.1 Subject to Rule 17.2, either party may amend or supplement its statement of claim or statement of defence, unless the Arbitrator considers it inappropriate to allow such amendment, having regard to the delay in making it or the prejudice to the other party or any other circumstance.

17.2 A claim may not be amended in such a manner as would exclude the claim from the scope of the arbitration agreement.

17.3 The Arbitrator may make such order as to costs incurred or wasted by such amendment as he considers appropriate.

## 18. SECOND PRELIMINARY MEETING

On receipt by the Arbitrator of the Submissions contemplated by Rules 12 to 16 he may, on the application of either party or at his own instance, convene a Second Preliminary Meeting with the parties for the purpose of considering:

18.1 whether the Submissions exchanged under Rules 12 to 16 duly comply with those Rules;

18.2 any application by either party for the Arbitrator's consent to the furnishing of further particulars to any Submission, or for the amendment of any Submission, or for the furnishing of any additional Submission;

18.3 the desirability of the separation of any issues for prior determination in terms of Rule 22;

18.4 any changes to the Rules which might be appropriate for the expeditious and costeffective resolution of the dispute;

18.5 the determination or the amendment of any of the time limits laid down in terms of Rule 3 or of any other Rule;

18.6 the discovery of any documents in terms of Rule 26;

18.7 the preparation and filing of witness statements in terms of Rule 27;

18.8 determining the manner and extent of recording evidence;

18.9 determining whether the Award shall be subject to an Appeal in terms of Rule 39;

18.10 if agreed, the adoption of provisions for an Appeal against the Award in terms of Rule 39;

18.11 a summary of the documents or chronology of significant events;

18.12 the preparation of a concise schedule tabulating the parties' oppos-

- ing contentions on each issue (a Scott schedule); and

18.13 any other matter which it is desirable to deal with that might facilitate the arbitration.

## 19. ADDITIONAL PRELIMINARY MEETINGS

The Arbitrator may, at his own instance, or on the application of either party to the reference, convene additional Preliminary Meetings for any purpose which, in the opinion of the Arbitrator, will expedite the matter or render it more cost effective.

## 20. PROPER LAW OF THE ARBITRATION

20.1 Unless the parties agree to the contrary, the seat of the arbitration shall be the Republic of Botswana.

20.2 The Arbitrator may hold hearings, meetings, receive argument and issue awards at any geographical place in his discretion whether within the borders of the Republic of Botswana or elsewhere.

20.3 Where hearings, meetings, argument or awards are held, received or made outside the borders of the Republic of Botswana, in the absence of agreement by the parties as to the proper law of the arbitration, the arbitration shall be deemed to be an arbitration conducted within the Republic of Botswana and any award as an award made within the Republic of Botswana.

## 21. SECURITY FOR COSTS

21.1 Subject to Rule 21.2 and unless the parties agree to the contrary, the Arbitrator may, on the application of the Defendant in convention or reconvention, order a Claimant in convention or reconvention to provide appropriate security for costs (including additional security) and may stay the arbitration proceedings pending compliance with such order.

21.2 In the event that the party ordered to provide the security fails to do so within the time stipulated by the Arbitrator without sufficient cause

the Arbitrator shall terminate the arbitration in relation to that party's claim and, if appropriate, direct that the arbitration proceed to determine the other party's claim.

## **22. PRIOR HEARING OF POINT OF LAW OR FACT**

The Arbitrator shall, if both parties so agree, or may, on the application of either party or at his own discretion, determine any particular issue of law or fact either separately or before other issues are determined.

22.1 The hearing of the said specified issue shall proceed and be conducted subject to conditions agreed by the parties or prescribed by the Arbitrator; and

22.2 The onus will be on the party seeking to oppose the separation of the issue of law and/or fact to establish that such separation will not contribute to the expeditious determination of the dispute and/or that the questions cannot conveniently be decided separately;

22.3 The Arbitrator shall not exercise his powers under sub-rule 22.1 without affording the parties an opportunity to make representations to him thereon.

## **23. AWARD WITHOUT ORAL HEARING**

Where the parties so agree and notify the Arbitrator in writing, the Arbitrator may make his Award without an oral hearing after consideration of the Submissions and any documents tendered by the parties and his observations made in any inspection in loco.

## **24. DEFAULT**

24.1 In the event of the Claimant not submitting its statement of claim within the time stipulated by the Arbitrator without showing good cause, the Arbitrator may issue a directive terminating the proceedings.

24.2 In the event of the Defendant not submitting its statement of defence within the time stipulated by the Arbitrator without showing good cause, the Arbitrator may issue a directive that the proceedings continue.

24.3 In the event that any party, without showing sufficient cause, fails to appear at a hearing or to produce documentary evidence, having received due notice to that effect, the Arbitrator may continue the proceedings and make the award on the evidence before him.

In the event that one party (the “defaulting party”) fails, neglects or refuses to comply with these Rules or to take part or further part in the arbitration, the Arbitrator may, after giving written notice to the defaulting party to remedy its default within a specified time which shall be reasonable in the circumstances, and the defaulting party fails to so remedy its default, proceed with the arbitration and make an Award.

## **25. POWER TO STRIKE OUT OR DEBAR**

The Arbitrator shall have the power, on application by one party and after hearing argument from both parties, to strike out the other party’s claim or a part thereof or to debar the other party from adducing expert evidence or evidence of any particular witness of fact where, in the opinion of the Arbitrator, there has been a serious failure by such other party to comply with some aspect of these Rules or some relevant direction of the Arbitrator, where such failure will, in the opinion of the Arbitrator, materially prejudice the applicant.

## **26. DOCUMENTS**

26.1 The Arbitrator may, on the application of either party or at his own instance, direct that one or both parties discover to the other documents and other material, including but not limited to, tape, video and magnetic disc recordings, relating to any matter in question in the arbitration which is in the possession or under the control of such party and, in such event, shall direct the procedure for such discovery.

26.2 Any documents delivered with the Submissions contemplated by Rules 12 to 16 shall be admitted in evidence without the necessity for their identification or verification by any witness but either party shall be entitled to lead evidence on the origin, accuracy, meaning or relevance of the documents.

26.3 No person shall, save with the leave of the Arbitrator or the consent of all the parties, be entitled to tender in evidence any documents or models unless he shall, not less than 15 days before the hearing, have delivered a notice to the Arbitrator and the other party stating his intention to do so, offering inspection thereof and requiring the party receiving notice to admit same within 10 days after receipt of the notice.

26.4 If the party receiving said notice fails within the said period to admit same, the said documents or models shall be received in evidence upon their mere production and without further proof thereof.

26.5 If such party states that he does not admit them, the said documents or models may be proved at the hearing and the party receiving the notice may be ordered to pay the costs of their proof.

## 27. EVIDENCE

27.1 The Arbitrator shall commence the arbitration and proceed without unnecessary delay to establish the facts by such fair means as may be appropriate.

27.2 Before any hearing the parties shall deliver the information specified in sub rules

27.2.1 and 27.2.2. Thereafter the Arbitrator may require, either at his own instance or on the application of either party, that the parties to the reference deliver written notice in terms of sub-rule 27.2.3:

27.2.1 the identity of the witnesses that each party wishes to call;

27.2.2 the subject matter of the witness' testimony;

27.2.3 a summary of the content of such witness' testimony, alternatively, full written statements.

27.3 Neither party shall be entitled to lead the evidence of any witness without complying with Rules 27.2.1 and 27.2.2 or where the Arbitrator has given a directive under Rule



27.2.3 without complying therewith, save with the leave of the Arbitrator.

27.4 Where, by virtue of the refusal of a witness to give a statement, a party is unable to comply with any directive given in terms of Rule 27.2.3, such party shall:

27.4.1 comply with the directive insofar as he is able;

27.4.2 give notice of the reason for his inability to comply therewith.

27.5 In the event of the Arbitrator giving a directive in terms of Rule 27.2.3 he shall determine whether the summaries or statements by the parties are to be given simultaneously or, if not, he shall fix the time within which each of the parties shall deliver the statements or summaries.

27.6 The fact that a party has given notice as required by Rules 27.2.1 and 27.2.2 or

delivered a summary or statement pursuant to Rule 27.2.3 shall not compel such party to call the witness to give evidence.

27.7 A summary or statement pursuant to a directive in terms of Rule 27.2.3, unless the parties agree to the contrary, shall not constitute evidence in the arbitration unless the witness is called to give evidence at the hearing.

## 28. EVIDENCE OF EXPERT WITNESSES

No party shall, except with the leave of the Arbitrator or the consent of all the parties, be entitled to call as a witness any person to give evidence as an expert upon any matter upon which the evidence of expert witnesses may be received unless he shall, not later than a date specified by the Arbitrator, have submitted to the Arbitrator and the other party notice of his intention so to do, in which event the following conditions shall apply:

28.1 Such notice shall specify the name and qualifications of each expert witness and shall briefly state the nature of the evidence which each will give.

28.2 Not less than 20 days prior to the commencement date of the hearing, alternatively within a time limit prescribed in terms of Rule 3, alternatively as may be otherwise agreed between the parties each party shall submit to the Arbitrator and the other party an Expert Witness Statement in respect of each expert witness that it intends to call, in which the evidence and the opinions of such expert witness and the reasons for such opinions are set out in detail.

28.3 Thereafter experts of like discipline who have been engaged by each party shall hold “without prejudice” meetings, without the respective parties’ representatives being present, with a view to:

28.3.1 comparing their respective opinions and endeavouring to reconcile differing points of view with the purpose of narrowing the issues between them; and

28.3.2 preparing a minute of such meetings wherein they set out the facts and opinions on which they agree, and those upon which they do not agree.

28.4 The minutes of the meetings in terms of Rule 28.3 shall be without prejudice, and copies thereof shall be submitted to the Arbitrator and to each party not less than 5 days prior to the commencement of the hearing.

28.5 The Arbitrator shall have the power to appoint one or more chairpersons to preside over the meetings contemplated by Rule 28.3 and the cost thereof shall be costs in the cause, and the Arbitrator shall give such directions regarding payments of these fees as he deems fit.

28.6 In the event of the Arbitrator expressing dissatisfaction with the minutes of the meeting of experts or in the absence of such meeting taking place, the Arbitrator shall be entitled to give any directive in respect to the manner in which the expert evidence is to be adduced and the order in which such evidence is to be called.

## 29. EXPERT ASSESSORS

The Arbitrator shall have the power to appoint one or more expert assessors to investigate, consider and report on any matter or matters specified by the Arbitrator, to which provision the following conditions shall apply:

29.1 the Arbitrator shall submit to each party a written notice of his intention to appoint an expert assessor wherein is furnished the proposed name of the Assessor and a copy of the instructions proposed to be given to such Assessor;

29.2 the Arbitrator shall thereafter consult with the parties in regard to:

29.2.1 the decision to appoint an Assessor/s;

29.2.2 the person/s proposed;

29.2.3 the instructions to be given;

29.3 the written report of such Assessor shall be submitted to each party at the same time that it is submitted to the Arbitrator;

29.4 unless otherwise agreed by the parties, if a party so requests or if the Arbitrator considers it necessary, the Assessor shall, after delivery of his written report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue; and

29.5 the qualifying fees of such Assessor shall be costs in the cause, and the Arbitrator may make such directions regarding the payment of such fees as he deems fit;

29.6 the Assessor shall not act as an Arbitrator and will not participate in the decision of the Arbitrator.

## 30. PRE-HEARING CONFERENCE

30.1 Prior to the commencement of the hearing the parties may arrange a pre-hearing conference with the objective of reaching agreement on possible ways of curtailing the duration of the hearing and in particular on all or any of the following matters:

30.1.1 the possibility of obtaining admissions of facts;

30.1.2 the holding of any inspection or examination;

30.1.3 the making of any discovery of documents;

30.1.4 the giving of any further particulars reasonably required for the purposes of the hearing;

30.1.5 the production of plans, diagrams, photographs, models and the like to be used at the hearing;

30.1.6 the consolidation of hearings;

30.1.7 the quantum of damages; and

30.1.8 the preparation and handing in at the hearing of copies of correspondence and other documents in the form of a paginated and indexed bundle with copies for the Arbitrator and both parties.

30.2 At the conclusion of such conference the parties shall draw up and sign a minute of the matters on which they have agreed and this shall be handed to the Arbitrator at the commencement of the hearing.

## 31. INSPECTIONS IN LOCO

31.1 The Arbitrator shall, if both parties so agree, or may, if he so decides on the application of either party or at his own instance, at any time make an inspection in loco of any site, building, structure or premises which relate to any matter in dispute in which event the following conditions shall apply:

## 30. PRE-HEARING CONFERENCE

31.1.1 unless otherwise agreed by the parties, the Arbitrator shall give both parties not less than ten days' written notice of the date and time when he intends to make such inspection.

31.1.2 the parties, together with their representatives and any relevant witnesses that they intend to call, may be present at such inspection and may point out to the Arbitrator such features or aspects of the site, building, structure or premises that they wish the Arbitrator to observe.

31.1.3 save with the express permission of the Arbitrator, no evidence shall be led and no argument shall be advanced during such inspection.

31.1.4 the Arbitrator shall record his observations in such manner as may be agreed by the parties, or in the absence of such agreement, in such manner as he may decide and such record of his observations shall form part of the record of the proceedings of the arbitration.

31.2 The absence of any party from an inspection arranged by the Arbitrator in terms of this Rule shall not preclude the arbitrator from proceeding with such inspection.

## 32. PAYMENT OF ADMITTED AMOUNT

The Defendant, in respect of the claim, or the Claimant, in respect of the counterclaim, shall be entitled, at any time before the delivery of the Arbitrator's Award, to pay to the other party an amount of money which he admits to be owing by him, to which provision the following conditions shall apply:

32.1 the payment shall be by cash, currently dated cheque or electronic deposit into the other party's bank account and, if by cheque, shall be effective when the cheque is paid on due presentation;

32.2 the payment shall be accompanied by a written notice specifying:

32.2.1 the claim or counterclaim, or part thereof, against which the payment is made; and

32.2.2 any tender which the party makes in respect of costs; and

32.3 a copy of the said notice shall be forthwith delivered to the Arbitrator who shall take the payment and any tender of costs into account in making his Award.

## 33. OFFER OF SETTLEMENT

33.1 The Defendant, in respect of the claim, or the Claimant, in respect of the counterclaim, shall be entitled, at any time before the delivery of the Arbitrator's Award, to tender payment of a specific amount of money without admission of liability, and as an offer of settlement, to which provision the following conditions shall apply:

33.1.1 the tender shall be in the form of a written notice to the other party specifying:

33.1.1.1 the claim or counterclaim, or part thereof, in respect of which the tender is being made; and

33.1.1.2 any tender which the party makes in respect of costs;

33.2 the recipient of the tender shall be entitled, by written notice delivered within 10 days after his receipt of the notice of tender, to accept the tender failing which notice he shall be deemed to have rejected the tender.

33.3 on receipt of a notice in terms of paragraph 33.2 the tenderer shall:

33.3.1 within 3 days pay the amount tendered to the other party and failing such payment the recipient of the tender shall be entitled to apply for an Award or an Interim Award ordering the payment to be made; and

33.3.2 after such payment, deliver to the Arbitrator copies of the notices referred to in paragraphs 33.1.1 and 33.2 together with a written statement that the payment referred to has been made;

33.4 subject to receipt of the notices and statement referred to in paragraphs 33.1.1 and

33.2, the Arbitrator shall take the facts therein recorded into account in making his Award; and

33.5 if the tender of settlement is not accepted the fact of the tender and its nonacceptance shall not be made known to the Arbitrator until he has made his Award on all the issues in the arbitration other than costs, whereupon the said facts shall be made known to him, and shall be taken into account by him in his award of costs, provided that if the Arbitrator shall have made an award of costs before becoming aware of the tender and its non-acceptance the tenderer shall be entitled to have the award reopened and reconsidered in respect of the costs.

## **34. ARBITRATOR'S EXPERT KNOWLEDGE - WEIGHT OF EVIDENCE**

Unless the parties agree to the contrary, the Arbitrator may, subject to the provisions of these Rules and subject to the rules of natural justice:

34.1 rely on his own expert knowledge and experience provided he discloses same to the parties;

34.2 have regard to all the evidence and attribute such weight to the evidence as he shall deem appropriate, whether or not that evidence is given under oath, and whether or not that evidence would be admissible in civil proceedings in a Court.

## **35. DELIVERY OF AWARD**

35.1 The Award shall be in writing and shall be published by delivery of a copy thereof to the respective parties.

35.2 The Arbitrator shall provide the reasons for his Award simultaneously with publication unless the parties otherwise agree or the Award is made in terms of Rule 36.

35.3 The award shall be deemed to have been published to the parties on the date on which it was so delivered.

35.4 Unless the parties otherwise agree, the Arbitrator shall deliver his award as soon as practicable but in any event within 90 days after the conclusion of the hearing, or the submission of the last document to the Arbitrator in the event that there is no hearing, provided that the parties, at the request of the Arbitrator, can extend this period in writing signed by them.

## **36. CONSENT AWARD**

If, during the arbitration proceedings the parties settle the dispute or any part thereof, the Arbitrator may, if requested by the parties, record the settlement in the form of an Award on agreed terms.

## **37. CORRECTIONS TO THE AWARD**

37.1 Unless otherwise agreed by the parties, the Arbitrator shall be entitled, whether on the application of a party or on his own initiative:

37.1.1 correct in any Award any clerical mistake or any error arising from any accidental slip or omission; or

37.1.2 clarify an ambiguity or uncertainty in the Award; or

37.1.3 make an additional Award with respect to claims presented in the proceedings but omitted from the Award.

37.2 If the Arbitrator acts on his own initiative under sub-rule 37.1, he shall do so within 15 days of the Award being delivered.

37.3 An application made by either party under sub-rule 37.1 shall be made within 15 days of the delivery of the Award, failing which neither party shall be entitled to seek such correction or clarification.



37.4 A correction, clarification or additional award under sub-rule 37.1 shall, unless the parties otherwise agree, be made within 30 days of the delivery of the Award.

37.5 Before exercising his powers under sub-rule 37.1, the Arbitrator shall first give the parties an opportunity to make representations, which representations must be made within 5 days of being called upon to so do by the Arbitrator.

37.6 If it appears to the Arbitrator that further submissions are required to enable him to make a decision pursuant to sub rule 37.1, he shall have the power to extend the time limits referred to in the relevant sub rule.

37.7 A correction or clarification under sub rules 37.1.1 and 37.1.2 shall take the form of an addendum to the Award, which shall be signed and dated by the Arbitrator and delivered under sub rule 35.1.

37.8 Sub-rules 35.1 to 35.3 shall apply to an additional Award under sub rule 37.1.3.

## **38. AWARD OF COSTS**

38.1 Unless the arbitration agreement otherwise provides, or the parties otherwise agree, the award of costs shall be at the discretion of the Arbitrator who may direct the costs to be taxed, alternatively, may himself settle the costs.

38.2 If the Arbitrator settles the costs he shall be entitled to employ the services of a professional taxing consultant to assist him in determining the amount of such costs to be awarded. However, in determining such costs the Arbitrator shall also be guided by the provisions of sub rules 38.4 and 38.10.

38.3 In the event of the Arbitrator employing the services of a professional taxing consultant, the costs thereof shall be costs in the cause subject to the Arbitrator's directive as to costs in his final award.

38.4 Disbursements made by a successful party to his representative in the proceedings shall be recoverable by way of an Award of costs on a

scale to be agreed between the parties, or if not so agreed, to be determined by the Arbitrator who may, in his sole discretion, direct that such costs shall be taxed in accordance with Section 35 of the Arbitration Act.

38.5 If the parties agree that the costs be taxed by the Taxing Master of the Court and the Taxing Master refuses or is unable to tax such costs, then the matter shall revert to the Arbitrator who shall either refer the costs to be taxed by such professional taxing service as may be agreed or, in the absence of agreement, as he may himself appoint, or make an award of such costs as he deems reasonable in the circumstances.

38.6 The parties, by having agreed to the adoption of these Rules for the conduct of the arbitration, shall be deemed to have undertaken to be liable jointly and severally to the Arbitrator for the due payment on demand of his fees and expenses.

38.7 The Arbitrator may direct that recoverable costs of the arbitration, or any part of the arbitral proceedings, should be limited to a specified amount and/or duration of the hearing and/or in any other appropriate manner.

38.8 Any directive made by the Arbitrator under sub-rule 38.7 may be varied at any stage provided that a direction for the limitation of costs or any variation thereof must be made sufficiently in advance of the incurring of costs or the taking of steps to which it relates for the limitation to be taken into account.

38.9 The Arbitrator shall not exercise his powers under sub-rules 38.7 and 37.8 without affording the parties an opportunity to make submissions to him thereon.

38.10 Nothing herein contained shall be construed as compelling the Arbitrator to use any tariff such as that contained in the Rules of the High Court in making an award in relation to the amount of recoverable costs, unless the parties otherwise agree.

## 39. APPEAL

The parties may, by a written and signed agreement, provide that the Award shall be subject to Appeal, to which provision the following conditions shall apply:

39.1 within 15 days of the publication of the Award either party may give written notice to the other, to the Arbitrator and to the Chairman of the Institute of its intention to refer the Award to an Appeal Tribunal;

39.2 the Notice of Appeal shall state whether the whole or part only of the Award is appealed against and if only part of such Award is appealed against, it shall state which part, and it shall further specify the findings of fact and/or rulings of law appealed against and the grounds upon which the Appeal is founded;

39.3 the Chairman of the Institute will appoint an Appeal Tribunal consisting of not less than three members and will give notice to the parties of the date or dates on which and the place where the Appeal will be heard and will secure a suitable venue for the hearing;

39.4 not less than 15 days prior to the hearing the Appellant shall deliver to the Appeal Tribunal and to the other party a sufficient number of copies of the record together with a like number of copies of such exhibits as may be necessary for the proper adjudication of the matter, provided that the parties may agree to dispense with the provision of the record together with the exhibits but shall in that event and within the same period for the delivery of the record agree the facts upon which the Appeal is to be heard which facts shall be recorded in writing and signed by the parties and submitted to the Appeal Tribunal;

39.5 within 10 days of giving Notice of Appeal the Appellant shall complete, sign and submit to the Institute due and proper security to the satisfaction of the Chairman of the Institute for the payment of all fees and costs in relation to or concerning the Appeal;

39.6 the Arbitrator may submit to the Appeal Tribunal any motivation or reasons for the Award within 10 days of receiving the Notice of Appeal

and shall submit copies of such motivation or reasons to the parties;

39.7 the Appeal Tribunal shall be entitled, but not derogating from its general powers:

39.7.1 to dismiss the Appeal on its merits;

39.7.2 to vary the Award;

39.7.3 to substitute its own Award;

39.7.4 to direct that the Award, either in whole or in part, be referred back to the Arbitrator for further consideration and for the making of a new or revised Award; and

39.7.5 to dismiss the Appeal for non-compliance with the provisions of this Rule;

39.8 in the event that the Appeal Tribunal refers the Award back to the Arbitrator in terms of Rule 39.7.4, the Arbitrator shall, within 30 days of the date on which the Award was so referred back to him, make and publish a new or a revised Award in terms of Rule 35 with the proviso that the Appeal Tribunal may, on good cause shown, extend such time for making a new or revised Award;

39.9 the decision of the Appeal Tribunal shall:

39.9.1 be final and binding on the parties;

39.9.2 constitute an Award as defined by the Arbitration Act for all purposes; and

39.9.3 be deemed to constitute the Award of the Arbitrator. For the purposes of this Rule, an Award shall include an Interim Award, and reference to the Chairman of the Institute shall include any person to whom the Chairman may assign the rights and duties conferred upon him by this Rule.

## 40. WAIVER

40.1 The parties are deemed to know the provisions and requirements of these Rules.

40.2 Any party who, in the knowledge that any provision or requirement of the Rules has not been complied with, proceeds with the arbitration without promptly objecting to such non compliance, shall be deemed to have waived his right to object.

### SUMMARY PROCEDURE RULES

The Summary Procedure Rules are intended for the smaller and simpler arbitrations, particularly where the parties are not represented and have little or no experience of arbitration procedure. They require that the Arbitrator plays a more active and interventionist role than he would do under the Standard Procedure Rules. If the parties agree to follow these Rules, they should adopt them by a written and signed agreement to do so.

## 41. APPLICATION OF CERTAIN STANDARD PROCEDURE RULES

The provisions of rules 7, 8, 11, 20, 22, 23, 24, 32, 33, 35 and 40 of the Standard Procedure Rules shall apply with the changes required by the context to an arbitration conducted under the Summary Procedure Rules. For the purposes of applying sub rule 35.4 the period shall be 10 days.

## 42. PRELIMINARY MEETING

On the reference of the dispute to the Arbitrator he may convene a Preliminary Meeting with the parties with the purpose of :

42.1 confirming that the dispute falls within the ambit of the arbitration agreement and is ready for arbitration;

42.2 recording the acceptance by the Arbitrator of his appointment and acceptance by the parties of any conditions attached thereto;

42.3 determining whether the arbitration is to be conducted in accordance with the Standard Procedure Rules or the Summary Procedure Rules or any modification of either;

42.4 ascertaining the nature of the claims and counterclaims and defences thereto which the parties make or raise against each other;

42.5 ascertaining the allegations of fact on which the parties agree and those on which they disagree;

42.6 recording in writing signed by the Arbitrator and the parties the matters referred to in Rules 42.4 and 42.5 which shall constitute the Statement of Issues;

42.7 arranging for the submission by each party to the Arbitrator and to the other party such

documents or copies of documents as they, or the Arbitrator, consider relevant to the determination of the issues; and

42.8 arranging the date, time and venue of the hearing.

## **43. CONDUCT OF THE HEARING**

The Arbitrator may, as he deems fit, follow formal or informal procedure and receive evidence or submissions, orally or in writing, sworn or unsworn, at joint meetings with the parties or, if the parties so agree, by the interchange of written statements or submissions, between the parties with copies to the Arbitrator, provided that each party shall be given reasonable opportunities of presenting evidence or submissions and of responding to those of the other party.

## 44. POWERS OF THE ARBITRATOR

44.1 The Arbitrator shall have the power to:

44.1.1 depart from any statutory or common law rules of evidence to the extent that he deems reasonable provided that the rules of natural justice shall be observed;

44.1.2 put questions himself to the parties or their witnesses on any matter relevant to the issues;

44.1.3 make any enquiries as he considers necessary or expedient;

44.1.4 grant to the parties such opportunity, as he deems reasonable, of making amendments to the issues or to any statement or submission;

44.1.5 inspect any property or thing to the extent that he deems necessary; and

44.1.6 rely, in his Award, on his own expert knowledge or experience in any field.

44.1.7 The Arbitrator shall inform the parties of information gathered or obtained pursuant to sub rules 44.1.3, 44.1.5 and 44.1.6 and give the parties an opportunity to respond before proceeding to rely thereon.

## 45. REPRESENTATION OF THE PARTIES

Unless the parties otherwise agree in writing neither of them shall be entitled to be represented in the arbitration except by;

45.1 the party himself, if a natural person or a partner in the case of a partnership;

45.2 a director in the case of a company;

45.3 a member of a close corporation;

45.4 a bona fide full-time employee or officer of the party concerned;

45.5 a trustee of a trust; or

45.6 such technically qualified person, other than a practicing lawyer, as the Arbitrator considers to be reasonably necessary for the presentation of the case of the party concerned, including without limiting the generality of the foregoing, any professional engineer, architect or quantity surveyor in the case of a dispute on a construction contract.

## **RULES AND GUIDELINES FOR THE CONDUCT OF THE SMALL CLAIMS ARBITRATION TRIBUNAL GUIDELINES**

These basic guidelines are intended to facilitate an understanding of the purpose and workings of the Small Claims Arbitration Tribunal ["SCAT"]. The process is not only structured to produce a quick, economical, and effective dispute resolution system but is also simple to implement. The parties do not require knowledge or experience of the arbitration process. The Arbitrator plays an active, interventionist role and shall assist the parties to achieve a cost effective process best suited to their search for justice.

1. The parties are not permitted to be represented by practicing attorneys or advocates though they may seek the assistance of suitably qualified advisors to prepare their written submissions to the Tribunal.

2. After the appointment of the Arbitrator, he may consider it appropriate to meet with the disputing parties so that a procedure to suit the nature of the dispute can be devised by discussion.

3. At this initial discussion the Arbitrator may consider it opportune to suggest an alternative dispute resolution process such as facilitating a settlement rather than continuing with the arbitration.

4. Should the parties wish to continue with arbitration, it may be more cost-effective to conduct the process on the basis of "documents only", with each party delivering written submissions and documentary evi-



- dence, rather than on the basis of a hearing with witnesses adducing oral evidence before the Arbitrator

5. Further savings of time and costs may be achieved by the parties and the Arbitrator agreeing, in appropriate circumstances, that the Arbitrator deliver an Award without reasons. Whether the Award is reasoned or unreasoned, it is final and binding on the parties.

6. Small Claims Arbitrations fall into one of three categories (as set out in the “Recommended Cost Structure” which forms an Annexure to these Rules) depending on the combined value of the claim and counterclaim, if any. The Recommended Cost Structure is updated by the Institute from time to time, and the parties and the Arbitrator are advised to confirm that they are in possession of the latest edition. Although SCAT is a highly simplified and flexible arbitration process, it remains subject to the Arbitration Act (Cap 6:01), as amended, and all peremptory provisions of the Act must be complied with.

## RECOMMENDED COST STRUCTURE

### ANNEXURE TO SCAT RULES

The parameters set out herein are, with the exception of the Institute registration fees (which are mandatory), merely guidelines which apply in the absence of any other agreement between the parties and the Arbitrator. The parties and the Arbitrator may, notwithstanding the maximum value recommended for Class 3 matters, agree to apply the SCAT Rules to matters in excess of such value

### CATEGORIES OF SCAT ARBITRATIONS

#### CLASS 1 MATTERS

Combined value of claim and counterclaim, if any, up to BWP7,000

Recommended process: Documents only, unreasoned Award

Recommended Cost Structure:

1 Institute Registration fee BWP250.00

2 Arbitrator: Fixed fee BWP 1,650.00

TOTAL COST (excluding VAT) BWP 1,900.00

## **CLASS 2 MATTERS**

Combined value of claim and counterclaim, if any, from BWP7,000 to BWP30,000

Recommended process: Documents only, unreasoned Award

Recommended Cost Structure:

1 Institute Registration fee BWP 750.00

2 Arbitrator: P650 per hr (8 hours max) BWP 5,200.00

3 Sundries BWP 200.00

4 Inspection allowance, if any BWP 650.00

TOTAL COST (excluding VAT) BWP 6,800.00

## **CLASS 3 MATTERS**

Combined value of claim and counterclaim, if any, from BWP30,000 to BWP60,000

Recommended process: Hearing with oral evidence, reasoned Award

Recommended Cost Structure:

1 Institute Registration fee BWP1,000.00

2 Arbitrator: P500 per hr (12 hours max) BWP7,800.00

3 Sundries BWP300.00

4 Inspection allowance, if any BWP650.00

5 Hearing allowance, 2hrs @ P650 per hr (maximum) BWP1,300.00

6 Reasoned Award Allowance BWP2,600.00

MAXIMUM TOTAL COST (excluding VAT) BWP13,650.00

All the above plus VAT

# SCAT RULES

## 1.0 Definitions

1.1 "Day" means any day other than a Saturday, Sunday or public holiday.

1.2 "Rules" means these SCAT arbitration Rules.

1.3 "Claimant" means the party to the arbitration who claims relief against the other party, provided that if each party claims relief against the other, "Claimant" shall mean the party who first referred the dispute to arbitration.

1.4 "Defendant" means the party to the arbitration other than the Claimant.

1.5 "Document" means, in relation to each party, any document of whatsoever nature in his possession or under his control, whether an original or a copy, relating to the dispute which has been referred to arbitration, including plans, photographs and recordings on magnetic tape, compact disc and computer disc or other electronic storage media, and "documentary" has the corresponding meaning.

1.6 "Submission" means any averment, denial, argument, or evidence in support thereof, submitted by a party to the Tribunal as part of its case, whether orally or in documentary form.

1.7 "Close of Submissions" means that stage in the proceedings when the parties have completed the presentation of their respective cases and of their responses to the other party's case, and the Tribunal commences to consider the Award.

1.8 Where appropriate, words importing the singular shall include the plural and words importing the masculine shall include the other genders.

1.9 "The Institute" means the Botswana Institute of Arbitrators.

2.0 Matters not Subject to the Small Claims Arbitration Process of the

Institute A matter may not be referred to arbitration under the SCAT Rules where:

2.1 the parties are represented in conflict with Rule 9 below;

2.2 the nature of the Award sought is anything other than monetary relief;

2.3 the combined value of the claim and counterclaim, if any, exceeds the limit recommended for a Class 3 matter, unless the parties and the Arbitrator agree otherwise;

2.4 more than two parties are involved;

2.5 there is no dispute between the parties;

2.6 there is no written agreement between the parties to refer the dispute to arbitration; or

2.7 where the nature of the matter is a matrimonial dispute or one concerning status.

### 3.0 Preliminary Procedure

3.1 Unless the arbitration agreement provides that the arbitration is to take place in accordance with the SCAT Rules of the Institute, the parties must, by written and signed agreement, commit themselves thereto.

3.2 The reference shall be initiated by the Claimant who shall, in writing, request from the Institute an "Application for Appointment of a Small Claims Tribunal" form (the "Application Form").

3.3 The Claimant shall, in its request, state the nature of its claim and the relief sought, and shall include therewith a copy of the arbitration agreement, and, if required by Rule 3.1, the written and signed agreement that the arbitration is to take place under the SCAT Rules.

3.4 The Institute shall by return issue to the Claimant the Application Form and a copy of the current Recommended Cost Structure, and indicate the registration fee payable.

3.5 On receipt by the Institute of the Application Form and the registration fee, the Chairman of the Institute or his nominee shall appoint the Tribunal and provide copies of the Application Form.

3.6 The registration fee shall not be refundable. The Tribunal shall take payment of the registration fee into account when deciding its award of costs.

3.7 The Tribunal shall confirm acceptance of its appointment in writing to the Chairman of the Institute and to both parties.

3.8 The Tribunal may then call for a Preliminary Meeting with the parties to agree the procedure to be adopted to resolve the dispute and/or take any other steps which it may deem appropriate in the circumstances.

4.0 Proceedings Private and Confidential Save to the extent necessary for the purposes of the arbitration, or for any court proceedings related thereto, or where otherwise under a legal obligation to do so, neither party shall, without the agreement of the other party, disclose or make available, to any other person, any information concerning the arbitration or the Award.

5.0 Powers of the Tribunal The Tribunal shall, subject to the Rules of Natural Justice, have the power to;

5.1 assist the parties to reach a settlement;

5.2 depart from any statutory or common law rules of evidence;

5.3 put questions to each party or its witnesses where applicable, on any matter relevant to the issues;

5.4 make any enquiries that it considers necessary or expedient, provided that it shall inform the parties of all matters ascertained as a result of such enquiries;

5.5 grant to the parties such opportunity as it deems reasonable for making amendments to submissions;

5.6 inspect any property or thing to the extent that it deems necessary; and

5.7 rely, in its Award, on his own expert knowledge or experience in any field, particularly when evaluating evidence presented.

## 6.0 Proceedings on Default

The Tribunal may proceed with the arbitration and make an Award, notwithstanding any failure, neglect or refusal of either party to comply with these Rules or to take part or further part in the arbitration.

## 7.0 Award of Costs

7.1 Reasonable disbursements made by a successful party to a representative of that party referred to in Rule 9.5 below, if any, may be awarded by the Tribunal against the other party, in an amount to be determined by the Tribunal.

7.2 The parties, by having agreed to the adoption of these Rules for the conduct of the arbitration, shall be deemed to have undertaken to be liable jointly and severally to the

Tribunal for the due payment, on demand, of its fees and expenses. Initially the Claimant shall be responsible for such payments but the Tribunal shall, in its Award, make any adjustments necessary to properly reflect liability for costs.

8.0 Delivery of Award Unless the parties otherwise agree, the Tribunal shall deliver its Award within four weeks after the last Submission to the Tribunal.

9.0 Representation of the Parties Neither of the parties shall be entitled to be represented in the arbitration except by:

9.1 the party himself; if a natural person, or a partner in the case of a partnership;

9.2 a director in the case of a company;

9.3 a member in the case of a close corporation;

9.4 a bona-fide full-time employee or officer of the party concerned; and

9.5 a person, other than a practicing lawyer, as the Tribunal considers to be reasonably necessary for the presentation of technical expertise relating to the disputed issues.

10.0 Limits Where no time period is specified for the doing of any act in terms of these Rules or in terms of any ruling, directive or decision of the Tribunal, the parties have not agreed, such period shall be stipulated by the Tribunal.

11.0 Dispute on Rules Any dispute about the meaning or effect of any of these Rules shall be determined by the Tribunal who shall further have the power to give directions, not inconsistent with the Rules, on the manner and time in which the Rules shall be carried into effect.

12.0 Tribunal's Fee

12.1 The Tribunal shall be entitled to charge a time-related fee up to the maximum set by the Institute in the Recommended Cost Structure current at the time of issue of the Application Form to the Claimant.

12.2 The Tribunal shall be entitled to charge an initial non-refundable deposit equivalent to 25% of the maximum fee allowed in the Recommended Cost Structure current at the time of issue of the Application Form to the Claimant.

12.3 The Tribunal may withhold its Award until its fee is paid in full.

13.0 Arbitration Act Save as varied herein, the provisions of the Arbitration Act (Cap6:01), as amended, shall apply to all arbitrations under the SCAT Rules.