

**ROYAL GOVERNMENT OF BHUTAN
CONSTRUCTION DEVELOPMENT BOARD**

**Rules and Procedures
of the
CONSTRUCTION ARBITRATION COMMITTEE**

**CHAPTER I
GENERAL PROVISIONS**

Article 1 Purpose

The purpose of the Construction Arbitration Committee shall be to provide a readily available and competent forum for the speedy and efficient resolution of disputes arising within the construction industry in Bhutan between one or more contractors, contractors and their sub-contractors and between contractors and employers.

Article 2 List of Arbitrators

- (1) To this end, the Construction Development Board shall appoint a list of appropriately qualified and impartial arbitrators from whom the parties submitting their disputes for arbitration under these rules may select the arbitrators who will constitute the Arbitration Panel.
- (2) The List of Arbitrators, together with their relevant qualifications, shall be open to inspection at the offices of the Construction Development Board and a copy of such list shall be sent to all interested parties upon request.

Article 3 Creation of an Arbitration Panel

An Arbitration Panel shall be created only with the agreement of the parties in dispute. Such agreement may take two forms:

- (i) a valid clause inserted in the contract in dispute which provides for the resolution of disputes by way of the Construction Arbitration Committee pursuant to the model

clause contained in Appendix 1 appended hereto;

- (ii) a request by the person seeking arbitration (“the Claimant”) for arbitration under these rules submitted to the Construction Development Board which is accepted by the person against whom the request for arbitration is submitted (“the Respondent”).

Article 4 Secretariat

- (1) The business of the Construction Arbitration Committee and all clerical matters arising out of the conduct of arbitrations under these rules shall be carried out by a Secretariat operated by the Construction Development Board. In particular, all requests for arbitration, acceptance of arbitrations and subsequent communications shall be addressed to the Construction Arbitration Committee at the Secretariat unless otherwise specified.
- (2) Copies of all relevant forms to be used under these provisions shall be available for collection at the offices of the Construction Development Board and a copy of such forms shall be sent to all interested parties upon request.

Article 5 Representation

A party may appear in person or may be represented by a lawyer or such other person as shall be recognised by the Arbitration Panel as suitable for the purposes of such representation.

CHAPTER II REQUEST FOR ARBITRATION

Article 6 Request

The Claimant or Claimants requesting arbitration under these Rules shall submit the following documents to the Secretariat together with the fee required in accordance with the Schedule of Fees appended hereto in Appendix 2:

- (i) A written request for arbitration in the form provided for on Form CAC01;
- (ii) A certified copy of the document evidencing the agreement between the parties which forms the subject matter of the arbitration under these Rules;
- (iii) Certified copies of any other documentary evidence relied upon in support of the claim set out in the request for arbitration;

- (iv) a list of witnesses of fact and expert witnesses intended to be called to give oral evidence;
- (v) Where the request is made by an agent of the Claimant, an appropriate power of attorney.

Article 7 Receipt

- (1) The Secretariat shall verify that the Request is in conformity with the provisions of Article 6 and, where the request is based on an arbitration clause inserted in the contract in dispute, that the said clause is sufficient to establish the jurisdiction of the Construction Arbitration Committee (a valid clause).
- (2) Where the Secretariat is satisfied that the conditions of the preceding paragraph are met, it shall record receipt of the Request in the Register of Arbitrations and assign it a Case Reference Number.
- (3) Upon recording receipt, the Secretariat shall immediately notify the Respondent or Respondents of the Request and include with the notice a complete copy of the Request.
- (4) The date upon which the notification is made shall be the operative date.
- (5) Any Request found not to be in conformity with paragraph 1 above shall be rejected and returned to the Claimant with the reasons for rejection. The Claimant may then re-submit its corrected Request.

Article 8 Reply

Within 10 days of the operative date, the Respondent or Respondents shall submit to the Secretariat a Reply containing the following documents:

- (i) A written Reply to the claim contained in the Request for arbitration in the form provided for in Form CAC02;
- (ii) Where the Request is not based on an arbitration clause inserted in the contract in dispute, an indication, as required on Form CAC02, of whether the Respondent accepts to seek resolution of the dispute in accordance with these rules;
- (iii) Certified copies of any documentary evidence relied upon in support of the Reply;
- (iv) a list of witnesses of fact and expert witnesses intended to be called to give oral evidence;

- (v) Where the Reply is made by an agent of the Respondent, an appropriate power of attorney.

Article 9 Counterclaim and Response

- (1) Where the Respondent seeks to make a Counterclaim to the claim made in the Request, it shall be made in the Reply and on the Form CAC02;
- (2) Where a Counterclaim has been made, the Secretariat shall immediately forward such Counterclaim to the Claimant who shall be given a further 10 days in which to submit its Response.
- (3) The parties shall supply with the Counterclaim or Response all documentary evidence relied upon in the support of the Counterclaim or Response.

Article 10 Registration

- (1) Following receipt of the Reply and, where applicable, the Counterclaim, the Secretariat shall verify that the Request is in conformity with the provisions of Article 8.
- (2) Where the Secretariat is satisfied that the conditions of the preceding paragraph are met or, where applicable, following the receipt of a Response to Counterclaim, it shall register the commencement of the arbitration procedure in the Register of Arbitrations.
- (3) The date of registration shall be the date of commencement.
- (4) At the date of registration, the Secretariat shall ensure that all parties have been provided with copies of the Request, Reply and, where appropriate, the Counterclaim and Response, if any.

Article 11 Default Award

- (1) Where the Request for arbitration is based on a valid arbitration clause inserted in the contract in dispute and where the Respondent or Respondents fail to submit a Reply within the specified time limit, the Secretariat may proceed with the appointment of an Arbitration Panel composed of a sole arbitrator within 15 days of the operative date.
- (2) The Arbitration Panel shall, if it is satisfied that the Request was duly served on the Respondent or Respondents and the party has failed to serve a Reply without good cause, have power to proceed with the arbitration and such proceedings shall be deemed to have been conducted in the presence of all parties.

- (3) The Secretariat shall inform the Respondent or Respondents of the appointment of the Arbitration Panel and of the date of the hearing.
- (4) If, following the operative date, the Respondent or Respondents seek to submit a Reply or Counterclaim or to make representations before the Arbitration Panel, such Reply, Counterclaim or representations shall be received by the Arbitration Panel only where, in the opinion of the Arbitration Panel:
 - (i) the Respondent or Respondents show good cause for their delay;
 - (ii) the Respondent or Respondents comply strictly with any directions given by the Arbitration Panel with regard to the subsequent conduct of the arbitration.

Article 12 Failure of Arbitration

- (1) Where the establishment of the Arbitration Panel is subject to the acceptance of the Respondent or Respondents pursuant to Article 3(ii) and no such acceptance is given within the relevant time limit, the Secretariat shall record the absence of acceptance in the Register of Arbitrations and mark the arbitration as failed.
- (2) The failure of the arbitration shall be notified to the Claimant or Claimants forthwith.

CHAPTER III APPOINTMENT OF THE ARBITRATION PANEL

Article 13 Qualification

- (1) All arbitrators shall be appointed from among those qualified and competent arbitrators appearing on the List of Arbitrators established by the Construction Development Board.
- (2) Every arbitrator appointed must be and must remain independent of the parties to the arbitration.
- (3) No arbitrator having a beneficial interest in the case under arbitration shall sit as an arbitrator in that case.
- (4) Before appointment, a prospective arbitrator shall disclose in writing to the Secretariat, which shall provide a copy to the parties, any facts or circumstances which might be of such a nature

as to call into question the arbitrator's independence or partiality in the eyes of the parties and the parties shall be given the opportunity of commenting upon the facts or circumstances within a time limit fixed by the Secretariat.

- (5) The obligation of paragraph 4 above is a continuing obligation on the arbitrators appointed. They are required to disclose immediately to the Secretariat any such facts or circumstances which arise between the date of arbitrator's appointment and notification of the final award.
- (6) Each arbitrator is under a continuing duty to keep confidential all information either written or oral disclosed during the arbitration proceedings.

Article 14 Number

- (1) The number of arbitrators shall be either 1 or 3.
- (2) Where the establishment of an Arbitration Panel is made by the agreement of the parties by way of a valid clause inserted in the contract in dispute which provides for the resolution of disputes by way of the Construction Arbitration Committee pursuant to the model clause contained in Appendix 1 appended hereto, the number of arbitrators and the method of selection shall be made according to the provisions of that agreement.
- (3) Where the establishment of an Arbitration Panel is the result of a request by the Claimant or Claimants under these rules which is accepted by the Respondent or Respondents, the number of arbitrators shall be the number agreed upon by the parties.
- (4) Where, pursuant to sub-paragraph 3 above, the parties cannot agree on the number of arbitrators within 10 days of the date of commencement, the number of arbitrators shall be 1.
- (5) In the case of the preceding paragraph, when one of the parties has requested the appointment of 3 arbitrators and the Secretariat, in consideration of the nature of the case, finds this request to be appropriate, the number of arbitrators shall be 3.

Article 15 Method of Appointment

- (1) Where the parties have agreed to appoint 1 arbitrator or where 1 arbitrator is to be appointed pursuant to Article 14.4, the parties shall appoint 1 arbitrator by mutual agreement.
- (2) If the parties fail to make the appointment within 10 days of the date of commencement, the Secretariat shall make the appointment taking into account, wherever possible, the intentions of the parties.
- (3) Where the parties have agreed to appoint 3 arbitrators, each party shall nominate their chosen

arbitrator in their Request or Reply, respectively. The parties shall also nominate a second choice arbitrator in the event of either (1) the unavailability of their first choice or (2) a challenge to their first choice. The third arbitrator, who shall also act as Chairman of the Arbitration Panel, shall be appointed by the common agreement of the two arbitrators appointed by the parties.

- (4) Where the arbitrators appointed by the parties fail to agree on the appointment of the third arbitrator within 10 days of the date of commencement, the third arbitrator shall be appointed by the Secretariat within a further 5 days.
- (5) In the case of Article 14.5 above, the parties shall be given 15 days from the date of commencement in which to appoint their chosen arbitrators. In the event of the failure of either or both parties to make the appointment, the Secretariat shall make the appointment of the arbitrator on behalf of the party or parties. Those arbitrators shall, by common agreement, appoint the third arbitrator. The provisions of paragraphs 3 and 4 apply to the selection of the third arbitrator.
- (6) Where there is more than one Claimant or Respondent and where 3 arbitrators are to be appointed, the Claimants or Respondents shall by common agreement, appoint a single arbitrator on behalf of the said Claimants or Respondents, respectively. In the event of failure to reach common agreement, the arbitrator shall be appointed by the Secretariat.

Article 16 Confirmation of Appointment

- (1) The appointment of all arbitrators shall, where the appointment is not made by the Secretariat, be notified to the Secretariat which shall record the confirmation of the Arbitration Panel in the Register of Arbitrations.
- (2) Confirmation of the arbitrators shall be notified forthwith to the parties.
- (3) The date of confirmation of the Arbitration Panel in the Register of Arbitrations shall be the effective date of the arbitration proceedings.
- (4) In the event of challenge pursuant to Article 17 below, the effective date shall be the date upon which the appointment of the replacement arbitrators is confirmed.

Article 17 Challenge

- (1) If a party wishes to challenge the appointment of an arbitrator by another party or by the Secretariat on one of the grounds enumerated in Article 13, he shall apply in writing to the Secretariat within 10 days of the appointment of the arbitrator giving the reasons for the challenge.

- (2) If the Secretariat agrees with the challenger on the merits of his challenge, then within a period of 10 days, as the case may be,
 - (i) the party whose choice of arbitrator was challenged, shall appoint a new arbitrator, or
 - (ii) where the Secretariat's choice of arbitrator was challenged, the Secretariat shall appoint a new arbitrator.
- (3) If the subsequent choices of arbitrator under paragraph (2)(i) above is unacceptable to any of the parties, the arbitrator shall be appointed by the Secretariat.

Article 18 Replacement

- (1) An arbitrator shall be replaced upon his death, resignation or upon the acceptance by the Secretariat of a challenge arising during the course of the proceedings pursuant to Article 13.
- (2) Replacement shall take place in accordance with Article 15 above at the direction of and according to the time limits imposed by the remaining arbitrators or, in the case of a sole arbitrator to be replaced, by the Secretariat.

CHAPTER IV THE ARBITRATION PROCEEDINGS

Article 19 Opening of Arbitration Proceedings

- (1) Within 5 days of the effective date, the Secretariat shall:
 - (i) appoint from its staff a Clerk to the Arbitration Panel who shall be responsible for all clerical activities on behalf of the Arbitration Panel and for all communications between the parties and the Arbitration Panel;
 - (ii) prepare and provide to the Arbitration Panel terms of reference as described on Form CAC03;
- (2) The Arbitration Panel shall at a date to be fixed by mutual agreement, hold a preliminary meeting with the parties and, taking into account the nature of the case defined in the terms of reference, shall determine the order, time and place of the Hearing or Hearings, provided always that the Arbitration Panel shall provide equal treatment to all parties in the presentation of their case.

- (3) At the request of the parties, the Arbitration Panel may proceed to make their decision in the absence of a Hearing. In such a case, the Arbitration Panel, if satisfied that it can make an award on the basis of the terms of reference, may proceed to make an Award without a Hearing.
- (4) In determining the order and time of the Hearing or Hearings, the Arbitration Panel shall give sufficient consideration to preventing the delay of the proceedings.
- (5) The Clerk to the Arbitration Panel shall communicate the decision of the Panel in the form of an order for directions to the parties within 10 days of the preliminary meeting.

Article 20 Applicable Law

- (1) In conducting the arbitration the Arbitration Panel shall apply the laws of Bhutan and shall have regard to any relevant trade usages.
- (2) Where, in the opinion of the Arbitration Panel, it is necessary to seek guidance on the applicable laws or interpretation of any Law or document based on such Law, the Arbitration Panel shall make an appropriate application to the High Court of Bhutan.
- (3) The arbitration proceedings shall be suspended pending the decision of the High Court.
- (4) Where explicitly requested by all parties, the Arbitration Panel shall have power to sit as commercial men and to reach a decision in accordance with the general principles of law and justice recognised in Bhutan, but, in such cases, it shall have regard to the provisions of the contract in dispute and to any common industry practices.

Article 21 Hearing

- (1) The Hearing or Hearings shall take place in the manner provided for by the Arbitration Panel's order for directions.
- (2) If one of the parties, despite having received notice of the Hearing in accordance with Article 19.3, fails to appear, the Arbitration Panel, if it is satisfied that the notification was received and the party is absent without good cause, shall have power to proceed with the arbitration and such proceedings shall be deemed to have been conducted in the presence of all parties.
- (3) The Arbitration Panel shall determine the language or languages of the arbitration taking into consideration the relevant circumstances and, in particular, the language of the contract.

- (4) The Hearing or Hearings shall be closed to the public save that, with the consent of the Arbitration Panel, persons having a justifiable interest in the proceedings may be admitted.
- (5) All information disclosed during the course of the arbitration proceedings whether written or oral shall remain confidential as between the parties and the Arbitration Panel.
- (6) The Clerk to the Arbitration Panel shall, for each Hearing, take and keep minutes stating the time, place and the names of those attending together with a summary record of the Hearing.
- (7) The Clerk to the Arbitration Panel shall take a stenographic record of the Hearing where the Arbitration Panel has so ordered or where there has been an application for such a record by one of the parties.

Article 22 Evidence

- (1) All relevant documentary evidence relied upon by the parties in support of their claims, replies and counterclaims shall be put before the Arbitration Panel in the Forms CAC01 and CAC02.
- (2) Subsequent documentary evidence shall be admitted only where, in the opinion of the Arbitration Panel, it is relevant and only with its consent.
- (3) During the hearing, any party may submit oral evidence in support of its own contentions by way of the voluntary appearance of witnesses or expert witnesses listed in the Request or Replies submitted by the parties.
- (4) The Arbitration Panel shall, during the preliminary meeting, give directions as to the service of the written witness statements in advance of the hearing.
- (5) The Arbitration Panel may, at its discretion, request the submission of further documentary evidence from the parties or request the presence of other witnesses or expert witnesses.
- (6) The Arbitration Panel may, where it deems necessary or on the application of a party, conduct inspections or investigations in the presence of the parties.
- (7) Save in cases where a party has failed to appear, the Arbitration Panel shall not accept evidence except in the presence of all parties.

Article 23 Conclusion of the Proceedings

- (1) The Arbitration Panel shall, when it is satisfied that all contentions and evidence of the parties have been submitted, conclude the arbitration proceedings.

- (2) Without prejudice to paragraph (1), the Arbitration Panel shall have the power to re-open a Hearing where, in its opinion, that is necessary for the proper conduct of the case.

CHAPTER V ARBITRAL AWARD

Article 24 Time of Award

The Arbitration Panel shall make its award within:

- (i) 10 days of the conclusion of the proceedings in the case of an arbitration with a hearing, or
- (ii) 20 days of the date of the notification of the decision of the Arbitration Panel to make an award in the absence of a Hearing pursuant to Article 19.5.

Article 25 Award

- (1) Where 3 arbitrators have been appointed, the award is given by a majority decision. The Chairman has the casting vote.
- (2) The Award shall be formulated in accordance with Form CAC04.
- (3) The Clerk to the Arbitration Panel shall notify all parties of the Award within 5 days of the Award.

Article 26 Award by Consent

Where the parties reach a voluntary settlement of their dispute following the effective date and before the date of Award, the settlement shall be recorded as an arbitral award by consent of the parties and signed by the Arbitration Panel. Such award by consent shall include agreement as to the sharing of the costs of the proceedings and shall be deemed final.

Article 27 Arbitration Costs

- (1) In addition to making an award on the merits of the case, the Arbitration Panel shall also make an award on the costs, including administrative costs, of the case and decide which of the parties shall bear the costs or the proportions of the costs to be borne by each party.
- (2) Without prejudice to paragraph 1, the arbitrator's fees and travel expenses shall be determined

by the Construction Development Board in accordance with the scales appended hereto in Appendix 2.

- (3) The Arbitration Panel may by decision, where it deems necessary, demand of the parties the advance payment of a proportion of the arbitrators' fees, expenses and administrative costs.
- (4) The Arbitration Panel may, where a party fails to abide by a decision of the Arbitration Panel with regard to such fees, expenses or administrative costs, take any measures it deems necessary in respect of such party to ensure compliance with that decision.

CHAPTER VI EFFECT OF AWARD

Article 28 Finality

- (1) The arbitral award shall be final.
- (2) By submitting the dispute to arbitration under these rules, the parties shall be deemed to have accepted these rules in their entirety; to have undertaken to carry out the resulting award without delay and to have waived their right to any form of appeal insofar as such waiver can be validly made.

Article 29 Enforceability

- (1) The agreement to submit to arbitration under these rules is a contractual agreement between the parties and the resulting award is a valid contract under the laws of Bhutan.
- (2) Where one or more of the parties fail to execute the award, the remaining party or parties may enforce the breach of contract before the High Court of Bhutan.